Monitoring and Evaluation of the Rule of Law in the Western Balkans

December 2016

NATIONAL STUDIES:
EXECUTIVE SUMMARIES AND POLICY RECCOMENDATIONS

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Monitoring and Evaluation of the Rule of Law in the Western Balkans

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Contents

Introduction

The three national studies on monitoring and evaluation of the rule of law in Macedonia, Serbia and Montenegro reflect on the developments in the areas Political criteria, Chapter 23 and 24 from the European acquis, for the period after the 2015 Countries' Reports by the European Commission. The purpose of these policy studies is to assess the trends in the areas under analysis in the three countries. The studies are conducted within the framework of the project Monitoring and Evaluation of the Rule of Law in Western Balkans (MERLIN WB), implemented by the European Policy Institute – Skopje in partnership with Institute Alternativa from Montenegro and the Belgrade Security Policy Forum from Serbia and funded by the European Fund for the Balkans. Based on the country studies, a policy paper covering the three countries (Macedonia, Montenegro and Serbia) was produced.

It is not our purpose to replicate or interpret findings of the EC report. Rather, our intention is to provide a deeper and more focused, and at the same time - a comprehensive and objective insiders' view on the development on essential issues of rule of law. Consequently, we aimed to give a qualitative assessment for each of the issues under analysis, going beyond addressing technicalities.

We based our studies on the jointly developed methodology. We identified the key areas under analysis: elections; parliament; government; civil society; civilian oversight over security forces; public administration reform; judiciary; anti-corruption; organized crime; fight against terrorism; fundamental rights and protection of minorities; asylum and migration; police reform and regional issues and international obligations. Most of the sub-areas correspond to the EC structure of monitoring and reporting, to ensure comparability. We applied process tracing[1] to determine the trends and examine whether there has been a backsliding or progress for each of the sub-criteria. This being said, we do not seek for rigor causality with the process tracing, but rather identifying the clues which can help affirming or weakening our hypotheses.

[1] David Collier, "Understanding Process Tracing," PS: Political Science & Politics 44, no. 4 (October 2011): 823–30, doi:10.1017/S1049096511001429.

MACEDONIA

Executive Summary

The past year has remained blighted by the political crisis caused by the illegal interception of communications by high-ranking officials. Major breakthroughs in re-establishing the rule of law did not occur, despite the pressure from the civil sector, both informal and formal. The protests by citizens, in the form of the Colourful Revolution, which were most intense during the spring of 2016, are now less frequent following Przhino 2 and the expectations of the early parliamentary elections. The focus on party bargaining during the Przhino negotiation process, albeit ensuring unobstructed work of Parliament further damaged the decision-making process. At the same time, the decision-making process focused on the fast adoption of Przhino-related provisions and mostly controversial laws and amendments put forward by the Government without broader deliberation.

The international community engaged heavily in the facilitation of negotiations involving the main four political parties, narrowing down the focus to ensuring minimum conditions for free and fair elections. Leverage was limited and difficult, more spared on repairing the damage than on pressure for real reforms. The migration crisis impacted on international leverage, shifting the focus and priorities from democracy to security.

Despite the "constructive participation" in the negotiations, the ruling parties took further action in countervailing the very essence of the agreement, as well as the basic principles of the rule of law, demonstrating a clear lack of political will along with a consistent strategy to postpone political and criminal responsibility by all means possible. The most flagrant example was the abolition by the President of a large number of persons involved in the wiretapping scandal, only one of the means for obstructing the work of the SPP. Furthermore, numerous partisan appointments and recruitments strengthened the linkage between state and party. Finally, following a minimized version of the Przhino Agreement, known as Przhino 2, which narrowed down the conditions for elections to the voter lists and an interim body controlling media reporting in the campaign period, early elections are scheduled for 11 December 2016.

Civil society engaged in more joint actions of advocacy; however, these efforts did not result in an adequate response from the governing parties. Still, the pressure has been increased and actions are more articulated.

It is indubitable that there has been no progress in respect of the rule of law within the past year. Nevertheless, this study indicates that progress in the different areas is varied: only one area has seen some progress and in other areas it has stagnated, while in majority of the covered areas we have noted backsliding. The overall assessment, however, is that, in order to deal with the political crisis and move forward on the Euro-Atlantic path, the incoming government must abandon the trend towards legislative changes and focus on substantial reforms and their proper implementation, while clearly separating the party from the state.

Policy Recommendations

None of the recommendations is addressed to the Government currently in power, as a precondition for re-establishing the rule of law in the country is that Government representatives take on political and other responsibilities with regard to the illegal interception of communications, as indicated by the wiretapping scandal in 2015.

To the political parties:

- To ensure that free and fair elections take place:
  - Not to list, as candidates for elections, persons against whom an investigation has been launched by the SPP
- To take on a public commitment before the elections to re-establishing the rule of law and ensuring the separation of state and party, especially through:
  - Ensuring independence of independent and supervisory bodies, with immediate focus on the Constitutional Court, Judicial Council and Council of Public Prosecutors
  - Providing support to the SPP
  - Ensuring the professionalism of the state security services
  - No political interference in the recruitment and career advancement of public administrators
  - Ensuring freedom of expression, with banning government advertisements in the private media as the most important priority, and professionalism of the Audiovisual Agency
  - Constructive and sustainable cooperation with the civil sector

To EU institutions:

- To focus again on the findings and recommendations of the Priebe Report and, consequently, the implementation of the URPs in the country

- To take into account the fact that EC leverage is decreasing, while the EU should not further abandon the instruments of the EU accession process without developing relevant and effective new instruments for promoting the rule of law

- Not to further compromise basic democratic values and trade democracy for security

- To avoid technicization in their reporting and recommendations and focus on assessing the actual, substantive progress in the different areas

To civil society:

- To continue and further strengthen the watchdog role in order to put more pressure on the institutions

- CSOs should continue to work together, articulate the priority issues and jointly advocate before political agents for the essentials and priority actions leading to the re-established rule of law in the country, before and immediately after the elections

- CSOs should continue to develop their actions of monitoring, cooperation and advocacy targeted at the independent, supervisory and regulatory bodies in order to motivate the latter to be more transparent and professional

To the independent supervisory and regulatory bodies:

▶ To the SEC:

- To be fully prepared for the forthcoming elections and play an active role; ensure objectivity in the work of the SEC and respond promptly to complaints; regularly and comprehensively inform the public on the preparations for the elections and publish the results of the election in a timely manner; ensure transparency through open sessions

- To present a detailed report to the public on the implementation of the amended Electoral Law, especially providing answers to the issue concerning the „cleansing of voter lists, presenting lessons learned and options, and open up a public debate

To the Judicial Council and Council of Public Prosecutors:

- To regain citizens trust by bringing back their integrity and not relenting under governmental pressure

- To include the media and the CSOs in their work, so as to increase their transparency

- To be transparent with regard to the elections and the advancement of judges and public prosecutors

SERBIA

Executive Summary

Serbia checked most of the boxes that were warranted by its accession process to the EU in 2015, a fact which was recognised on 18 July when negotiations on Judiciary and Fundamental Rights (Chapter 23) and Justice, Freedom and Security (Chapter 24) were opened. The opening of these two chapters was a result of a long process that was characterised by several rounds of consultations regarding drafting of corresponding Action Plans, producing Negotiating Positions, and coordination efforts on the part of line ministries hitherto never seen before. The Belgrade-Pristina dialogue continued, despite the fact that the implementation of the already reached agreements was lagging. Finally, early elections were organised on April 24, when the incumbent Prime Minister s coalition won by a landslide and formed a new, decidedly pro-European Government. Despite the fact that the new parliamentary convocation now gathers parties sceptical toward or against the EU, there seem to be no obstacles when it comes to either support or legitimacy of the Government s pro-EU agenda.

However, if these technical aspects of accession talks are set aside, the current situation when it comes to the rule of law area leaves much to be desired. In the annual World Justice Project s Rule of Law Index for 2016, Serbia holds the same score when compared to the previous year; its ranking, however, fell by four positions, indicating stagnating reforms and no progress.[2] In their 2016 World Press Freedom index, Reporters without Borders claim that media freedoms declined from 2014 onwards, citing editorial pressure, public attacks against critics and faulty application of the media law package.[3] In addition, serious incidents involving law enforcement agencies continue to showcase all troubled spots and failures of state institutions, and disrespect for the rule of law principles. The most prominent one, the so-called Savamala incident, demonstrated that the police, prosecution, both state and Belgrade city authorities, including the media with national coverage, can all be effectively silenced or counted upon not to act when needed, contrary to the law and despite the best public interest.

If any of the areas covered by this study is to be observed separately, the progress achieved differs. For instance, when it comes to handling the migration-refugee crisis,

[2] Compare: "The Rule of Law Index 2016 Report" (Washington: The World Justice Project, 2016), http://worldjusticeproject.org/sites/default/files/media/wjp_rule_of_law_index_2016.pdf; "The Rule of Law Index 2015 Report" (Washington: The World Justice Project, 2015), http://worldjusticepr oject.org/publication/rule-law-inde x-reports/rule-law-index-2015-report.

[3] "Serbia : Europe Still Far Away," RSF, accessed November 1, 2016, https://rsf.org/en/serbia.

the actions of Serbian authorities are highly commendable. This is despite the fact that the legal alignment in this area is not taking place as envisaged by the relevant Action Plan due to the ongoing crisis. In some other areas there has only been stagnation, as is the case with elections where OSCE/ODIHR recommendations from 2014 can still be taken and prescribed almost verbatim after the 2016 elections. Finally, there are areas where serious backsliding is evident, as is the case with the external oversight of the security sector.

However, despite the patchy track record, the overall conclusions of the study are that the progress in crucial areas is not sufficient and that more credible efforts are required. What Serbia had so far was mostly mimicry of reforms that were implemented under the mantra of the EU accession process. For these to be sustainable and impactful, the Government must focus on the basics, namely on strengthening institutions and showing full respect to the rule of law principles.

Policy Recommendations

Based on the above presented analysis, the following general recommendations need to be considered for the policy areas covered by this study.

To the government:

- The Government should remain committed to implementing the Action Plans for Chapters 23 and 24 in good faith and in a timely manner;

- The Government needs to remain open to the consultation process with all relevant stakeholders, including the civil society organisations, and not only for the purposes of reporting on the achieved progress;

- Orchestrated attacks on independent state institutions, investigative journalists and civil society organisations need to be investigated and perpetrators prosecuted;

- A new, comprehensive law on security services needs to be adopted to ensure proper delineation of competences, and coordination and cooperation between them as well as with other institutions;

- In order to ensure free and fair elections, a single election law needs to be adopted, with the view to unifying election-related provisions currently spread across and contained in several laws (e.g. the Law on the Election of Representatives, the Law on Local.

In order to ensure free and fair elections, a single election law needs to be adopted, with the view to unifying election-related provisions currently spread across and contained in several laws (e.g. the Law on the Election of Representatives, the Law on Local Elections, the Law on Political Parties, etc.).[4] Key issues to be addressed are: update of the voter register, increasing capacities of REC and its transformation into a permanent body, and implementing necessary measures to assure a more level playing field for the election contestants;

A positive track record needs to be established and demonstrated, including final convictions in high-profile cases, in the areas of fight against corruption and fight against organised crime. In addition, a positive track record is needed in the areas of human rights and minority issues, particularly regarding the full exercise of freedom of expression, and in fight against discrimination of the most vulnerable groups;

Depoliticisation should be placed on the Government s agenda as a priority. This is particularly true for the areas of judiciary, public administration, public enterprises, law enforcement agencies and the media.

To the parliament:

Adopting the changes to the Rules of Procedure of the National Assembly could provide a leeway, at least for the opposition parties if the ruling majority have no intention, to exert more control over the executive branch of the Government;

Making the legislative agenda/calendar publically available would contribute to better participation of relevant stakeholders in the process of adopting laws;

Parliamentary committees need to be allowed to fully exercise their control powers, especially over the security sector, in line with their remits.

To political parties:

Political parties need to take on a public commitment to supporting the rule of law and ensure the separation of state and party;

As key stakeholders in the political arena, through their internal procedures and public commitment, political parties need to sanction clientelism, nepotism and assure depoliticisation of key state institutions and sectors.

[4] CRTA, "Executive Summary Report: Early Parliamentary Elections 2016," 5.

To the EU institutions:

- The EC should move their focus away from insisting on stability and security, and shift it back to fundamentals, i.e. supporting the rule of law, basic democratic values and strong institutions.

- The EC should avoid overt technicisation in their reporting and recommendations, and focus on assessing actual, substantive progress achieved in different areas.

To civil society:

- CSOs need to continue with their watchdog role when it comes to the reform process under the auspices of the EU accession talks, to assure that substantive changes are taking place on the ground.

- CSOs should improve their cooperation and exchange best practices, with the view to achieving a synergetic impact on the policy process. This is true at the national, but also at the Western Balkans level, since democratic backsliding is taking place across the region and these trends share common features and dynamics.

- CSOs should further develop and initiate actions of monitoring, targeted advocacy and awareness raising, even when not invited to do so by all the stakeholders involved in the EU accession process.

MONTENEGRO

Executive Summary

Despite the establishment of new anti-corruption institutions and intensive legislative activity, Montenegro has not significantly advanced towards meeting the EU s political criteria and rule of law standards.

Reform of the judiciary is ongoing, but problems identified at the outset, including accountability, independence and impartiality, remain a challenge. The key issues, such as the recruitment and promotion of prosecutors and judges, the transparency of how their performance is evaluated, ethical and disciplinary accountability, criminal liability and the rationalization of the judiciary network, have still not been adequately addressed.

The establishment of the Agency for the Prevention of Corruption was marked by many controversies and a lack of transparency. All penalties imposed for violation of the Law on Prevention of Corruption are below the legal minimum. Donations by individuals to political entities are not sufficiently transparent. The Agency failed to grant whistleblower status to an individual who had exposed misuse of public funds for party purposes. The work of the Special Prosecutor s Office (SPO) represents a rare example of progress in the area of the fight against corruption, although there are many obstructions impeding its work.

The fight against organized crime is still marked by difficulties arising from the shift from judicial-led to prosecutorial-led investigation and the process of adjusting police officers and prosecutors to their new roles. A Special Police Department was formed with a half-year delay, and although the Police Development Strategy 2016-2020 was enacted, the implementation of its measures has been delayed.

Several event in Montenegrin political dynamics marked 2016. The Social Democrat Party (SDP) left the ruling coalition, subsequently joining the so-called government of electoral trust with the other two opposition parties. The government of electoral trust had some positive effect on the transparency of the government s work, but it did not manage to prevent electoral misuses, while the competent institutions lacked proactivity in ensuring free and fair elections.

Misuse of public funds, cases of vote-buying and many violations of the law were reported during the electoral campaign and on election day itself. The SPO raised 157

cases for criminal acts against electoral law, based on charges filed by NGOs, political parties and citizens and on media reports. The opposition refused to recognize the election results due to allegations and official statements made on election day by the police and prosecutors, claiming that terrorists from Serbia, acting on behalf of certain parties, were planning to capture the prime minister.

The not particularly ambitious Public Administration Reform Strategy and its accompanying Action Plan were adopted after more than half a year of delay. Merit-based recruitment is yet to be achieved, and the implementation of several laws has been repeatedly postponed. The start of EU membership talks has not sufficiently curbed politicization in Montenegro.

The accountability of local government is particularly worrisome, with information about finance at the local level considered confidential by the Ministry of Finance. The lack of budget transparency is also a problem at the national level.

Cooperation between civil society and the government has slid backwards. The Law on NGOs has not been amended, while the work of the Council for the Development of NGOs has been hampered by a boycott by NGO representatives. EU membership talks continue to involve the government and the European Commission almost exclusively. Other relevant actors, including CSOs, are sidelined and their role is further downgraded by a lack of public access to expert opinions issued in the process of approximation of Montenegrin legislation with EU standards.

Government efforts to achieve social inclusion do not provide sufficient control of funds for the employment of marginalized groups. There is no systematic approach covering all types of discrimination. Although new legal provisions could improve the organization of public assemblies in Montenegro, they fail to address two enduring issues: administrative procedures and good policing. Personal data remains insufficiently protected and freedom of information is still difficult to achieve. There has not been sufficient progress either in dealing with incidents of attacks on journalists, as threats to journalists are not considered criminal acts.

Policy Recommendations

Legislative recommendations

Amend the Law on Financing of Political Entities and Election Campaigns in order to enable the Agency for Prevention of Corruption to control data submitted by institutions and political entities, and not only collect it.

The Law on Local Administration needs to be further amended in order to specify the rules for human resource management at the local level, which have proved particularly worrisome;

The upcoming work on amendments to the Law on Civil Servants and State Employees and relevant by-laws should address the persistent levels of politicization and non-merit based recruitment in public administration.

Law on Free Access to Information should be amended in order to resolve existing problems in the area of freedom of information, particularly the legal loophole which allows authorities not to act upon decisions made in favour of claimants by the Council of the Agency for Protection of Personal Data and Free Access to Information.

Adopt a Law on the Parliament that ensures more precise definition and differentiation of competences of the branches of government, that defines the obligation to report automatically on parliament s conclusions within a framework set as optimal by the lead committee, and that sets out penalties and sanctions for state

To the competent authorities

MoI in cooperation with the SEC should establish a clear methodology on the register of voters. Firstly, a list of holders of citizenship who have not resided in Montenegro for two years prior to elections must be made, followed by the deletion of those names from the register of voters. Secondly, a reliable system of monitoring the migrations of residents must be established;

SEC should introduce better recruitment procedures for electoral committees in terms of providing them with adequate training and instructions for elections;

- The Ministry of Finance and local administrations should open up the currently closed budget data and information of public finances in order to permit greater public scrutiny;

- The Police Administration, the High Courts and the State Prosecution, as institutions involved in the chain of applying secret surveillance measures, should keep records of statistical information on the application of such measures and make it transparent;

- The Ombudsman's office should ensure monitoring system in order to track implementation of its recommendations;

- Ministry of Interior and Police Directorate should ensure effective mechanisms for determining accountability and liability of abuse of powers by police officers;

- The Police Administration must cooperate with The Government s Commission for monitoring the competent authorities in investigating cases of intimidation and violence against journalists, murders of journalists and attacks on media property, by providing relevant information and documents that could help the investigation of the attacks on media and journalists.

To Parliament:

- Improve reporting on control and consultative hearings held; make state institutions more accountable by adopting definite conclusions after hearings and by drafting detailed committee reports on the implementation of conclusions;

- Introduce an obligation to conduct regulatory impact assessments (RIA) for bills proposed by MPs.

To the Government:

- Maintain good practices of proactive publishing of information important for the prevention of abuse of public resources, undertaken by the Government of Electoral Trust;

- Ensure transparent and comprehensive result-oriented monitoring of implementation of EU-related obligations, especially within the Chapters 23 and 24;

- Adopt a new Action Plan for the implementation of the Strategy for the Reform of the Judiciary (2017-2019) with emphasis on measuring the influence of implementation;

- Publish track record annexes to the bi-annual reports on the implementation of action plans for Chapters 23 and 24;

- Streamline procedures and criteria for the public funding of NGOs.

To the European Commission:

- Increase the transparency of accession negotiations via publishing the reports of expert missions on the approximation of Montenegrin legislation with EU standards.

Judiciary:

- Prepare new Action Plan for the implementation of the Strategy for the Reform of the Judiciary (2017 – 2019) with emphasis on measuring the effects of implementation;

- When it comes to recruitment in the judiciary, it is necessary to introduce reporting on the number of candidates who apply for each vacancy announcement (internal and public) and to publish score lists and justifications for appointments;

- Proactively publish the grades of presidents, judges, prosecutors and employees in the judiciary, while maintaining personal data protection;

- Encourage the presidents of courts and prosecutor s offices to start using official procedures for determining ethical and disciplinary responsibility in order to promote a culture of accountability in the judiciary;

- Inform citizens and interested parties in court procedures about opportunities for making complaints about the actions of judges and prosecutors, i.e. about the types of procedures that can be commenced against them.

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Publisher:
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Authors:
Malinka Ristevska Jordanova, PhD
Kristina Dimovska, MA

Proofreading:
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Vladimir Gjorgjevski

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LIST OF ABBREVIATIONS

CVE- Countering Violent Extremism

DPA – Democratic Party of the Albanians

DUI – Democratic Union for Integration

EC – European Commission

EPI – European Policy Institute

EU – European Union

IA – Intelligence Agency

MOI – Ministry of Interior

ODIHR – Office for Democratic Institutions and Human Rights

OSCE – Organization for Security and Cooperation in Europe

PAR – Public Administration Reform

PPRM – Public Prosecution of the Republic of Macedonia

SCPC – State Commission for Prevention of Corruption

SDSM (SDUM) – Social Democratic Union of Macedonia

SEC – State Election Commission

SPP – Special Public Prosecutor

UBK (SCID) – Security and Counterintelligence Directorate

UNHCR – United Nations High Commissioner on Refugees

URP – Urgent Reform Priorities

US – United States

USA – United States of America

VMRO-DPMNE (IMRO-DPMNU) – Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity

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INTRODUCTION

This national study on monitoring and evaluation of the rule of law in Macedonia reflects on the development in the areas concerning the political criteria, Chapter 23 and 24 from the Acquis covering the period after the 2015 Country Report by the European Commission (EC). The purpose of this policy study is to assess the trends in the areas under analysis in the Republic of Macedonia. The study is conducted within the framework of the Monitoring and Evaluation of the Rule of Law in the Western Balkans (MERLIN WB) project conducted by the European Policy Institute – Skopje (EPI), in partnership with Institut Alternativa from Montenegro and the Belgrade Centre for Security Policy from Serbia, and funded by the European Fund for the Balkans. Based on the country studies, a policy paper covering the three countries (Macedonia, Montenegro and Serbia) will be produced.

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We have based our study on jointly developed methodology. We identified the key areas under analysis: elections; parliament; governance; civil society; civilian oversight over security forces; public administration reform; the judiciary; anti-corruption; organized crime; the fight against terrorism; fundamental rights and the protection of minorities; asylum and migration; police reform; and regional issues and international obligations. Most of the sub-areas correspond to the EC structure of monitoring and reporting in order to ensure comparability. We applied process tracing[1] to determine the trends and examine whether there has been any backsliding or progress with regard to each of the sub-criteria. That being said, rather than seek rigor causality with the process tracing, we instead identify the clues, which can help to affirm or weaken our hypotheses.

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CONTEXTUAL BACKGROUND

The past year has been marked by the continuing political crisis arising from the wiretapping scandal in the Republic of Macedonia. In order to resolve the crisis, the leaders of the four main political parties (SDSM, VMRO, DUI and DPA[2]), with mediation and pressure from the international community, signed the Przhino Agreement, also known as the June/July Political Agreement (2015).[3] The agreement included several key issues that were foreseen as the "cure" for the crisis: early parliamentary elections and organization of a government responsible for their conduct, return of the Opposition in the Parliament and termination of publishing the wiretaps, resolving the wiretapping scandal, implementation of the EC's recommendations for reform (Urgent Reform Priorities (URPs))[4] and establishment of a Special Public Prosecution (hereinafter SPP) to resolve the wiretapping scandal.

As of March 2016, inter-party negotiations continued without the international mediator Peter Vanhoutte, who had been engaged by the EC in mediation in Macedonia since 2012. Although the EU institutions never gave an official statement as to why Vanhoutte's contract was not extended, one can argue it was due to the fact that towards the end of his mandate he started to advocate openly for essential reforms in Macedonia.

In March 2016, the Constitutional Court made a decision to abolish several articles of the Law on Pardoning from 2009. This controversial decision resulted in President Ivanov giving a collective pardon to 57 suspects against whom criminal charges had been filled and criminal procedures initiated. Even though, following strong pressure from the international community, the pardons were further revoked, this does not change the fact that, for a short period, the President was effectively positioned above the Court and the Assembly.

The whole series of political actions leading to the abolition, once again demonstrated that the governing parties not only lacked political will in resolving the crisis, but were also willing to compromise the constitutional system and the rule of law at any price in order to avoid responsibility for the wrongdoings linked to the interception of communications scandal. "The reparation of damage" in the form of the abolition and it subsequent withdrawal was possible only with strong pressure from the international community.

The recommendation for the start of European Union accession negotiations was "frozen",[5] conditional upon the full implementation of the June/July Political Agreement and the URPs. As there was no progress in the implementation of the URPs, the focus of the negotiations throughout the year gradually narrowed down to selected issues related to elections, initially with regard to the voter registration, separation of state and party and media reform.

After two postponements of the scheduled early parliamentary elections, due to non-implementation of the set conditions, Przhino 2 was signed on 20 July 2016, further narrowing down the conditions for elections to the clean-up of the voter lists and media reporting in the pre-election period, following which a pre-election transitional government was appointed.

The citizens' protest continued throughout the year, taking the form of the "Colourful Revolution", which mainly demanded political responsibility for the wiretapping scandal and supporting the SPP. Following Przhino 2, the intensity of citizens' protests decreased.

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[2]SDSM – Social Democratic Union of Macedonia; VMRO-DPMNE – Internal Macedonian Revolutionary Organization – Democratic Party for Macedonian National Unity; DUI – Democratic Union for Integration; DPA – Democratic Party of the Albanians

[3]For more information, see: European Policy Institute, "A word is a word" (January 2016), http://www.epi.org.mk/docs/Network%2023_Implementation%20of%20the%20Political%20Agreement(1).pdf.

[4]European Commission, "Urgent Reform Priorities for the Former Yugoslav Republic of Macedonia (June 2015)" (European Commission., June 2015), http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_urgent_reform_priorities.pdf.

[5]European Commission, "Progress Report for Republic of Macedonia 2015" (European Commission, November 2015).

EXECUTIVE SUMMARY

The past year has remained blighted by the political crisis caused by the illegal interception of communications by high-ranking officials. Major breakthroughs in re-establishing the rule of law did not occur, despite the pressure from the civil sector, both informal and formal. The protests by citizens, in the form of the Colourful Revolution, which were most intense during the spring of 2016, are now less frequent following Przhino 2 and the expectations of the early parliamentary elections. The focus on party bargaining during the Przhino negotiation process, albeit ensuring unobstructed work of Parliament further damaged the decision-making process. At the same time, the decision-making process focused on the fast adoption of Przhino-related provisions and mostly controversial laws and amendments put forward by the Government without broader deliberation.

The international community engaged heavily in the facilitation of negotiations involving the main four political parties, narrowing down the focus to ensuring minimum conditions for free and fair elections. Leverage was limited and difficult, more spared on repairing the damage than on pressure for real reforms. The migration crisis impacted on international leverage, shifting the focus and priorities from democracy to security.

Despite the “constructive participation” in the negotiations, the ruling parties took further action in countervailing the very essence of the agreement, as well as the basic principles of the rule of law, demonstrating a clear lack of political will along with a consistent strategy to postpone political and criminal responsibility by all means possible. The most flagrant example was the abolition by the President of a large number of persons involved in the wiretapping scandal, only one of the means for obstructing the work of the SPP. Furthermore, numerous partisan appointments and recruitments strengthened the linkage between state and party. Finally, following a minimized version of the Przhino Agreement, known as Przhino 2, which narrowed down the conditions for elections to the voter lists and an interim body controlling media reporting in the campaign period, early elections are scheduled for 11 December 2016.

Civil society engaged in more joint actions of advocacy; however, these efforts did not result in an adequate response from the governing parties. Still, the pressure has been increased and actions are more articulated.

It is indubitable that there has been no progress in respect of the rule of law within the past year. Nevertheless, this study indicates that progress in the different areas is varied: only one area has seen some progress and in other areas it has stagnated, while in majority of the covered areas we have noted backsliding. The overall assessment, however, is that, in order to deal with the political crisis and move forward on the Euro-Atlantic path, the incoming government must abandon the trend towards legislative changes and focus on substantial reforms and their proper implementation, while clearly separating the party from the state.

1. ELECTIONS:
(RE) SET THE DATE FIRST, DO THE REFORMS LATER

Despite the changes in the composition of the State Election Commission (SEC) and the complex processes of revision of the voter registry, we can only **assess this area as stagnating**, as the results of the actions performed do not match the expectations. The 2015 trend in terms of legislative changes, rather than substantial reforms[6] continued, turning the overall reform process into political bargaining. The change in personnel and the creation of ad hoc bodies (see the Freedom of the Media section), instead of reforming the existing ones, are further indicators that the reforms were only intended to have a short-term impact, with no indications as to how the strong politicization of institutions in charge of conducting elections will be resolved.

One of the key issues was **setting the date for early parliamentary elections**. Early elections were firstly scheduled for 24 April 2016 and then for 5 June, but were both postponed. Both agreed dates failed because there was no agreement among the four main political parties that conditions for free and fair elections were met. In February, the governing coalition voted to dissolve the Parliament, regardless of the position taken by the opposition party SDSM.[7] Following negotiations and facilitation by the international community, the Parliament reconvened, on the basis of the Constitutional Court's decision regarding the cessation of all electoral processes, at the behest of the DUI.[8] Some believed that these series of actions pushed the Parliament to act in a legal grey area.[9]

The international community, which was, in the beginning indecisive in terms of the level of interference in setting the date of the elections, gradually took the stance that the agreement on the date of the elections should be taken by the four main parties as signatories to the Przhino Agreement, on the basis of minimum objective criteria. This stance followed the tactless statement by Commissioner Johannes Hahn that agreement by three of the parties was enough to schedule early elections.[10] Przhino 2 set the date for elections to be 11 December 2016.[11] Despite this election date being agreed and so far respected, the results of the implemented electoral reforms are modest to date.

The focus of electoral reform was on strengthening the composition and capacity of the State Electoral Commission (SEC), 'cleansing' voter lists and media reporting. Thus, the number of members of the **SEC** increased from seven to nine and the number of independent experts on the SEC increased to three, while six are now nominated by the four major political parties. The President and the Deputy President were elected from among the independent experts. This was achieved with a **five-month delay**. Additional staffing was difficult and many positions remained temporary, instead of permanent.

The SEC did not work in a transparent manner, as only two sessions of the SEC were public and its decisions are not published on the website in a systematic and timely fashion, despite its legal obligations to do so. However, **the SEC has made significant efforts in revising the voter lists, including cross-checking 11 state institution databases and field inspections and verifications**.

In an attempt to increase confidence in the verification of the voter lists, the SEC has also provided a **public inspection of these lists**, allowing each citizen to inspect and check their own data electronically. The lists were removed due to a decision by the Directorate for Personal Data Protection to prohibit the publication of voters' personal

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[6] Ibid.

[7] telma.mk, "ВМРО-ДПМНЕ и ДУИ заеднички предложија распуштање на Парламентот да се усвои денеска, а да важи од 24-ти февруари (In English: VMRO-DPMNE and DUI together proposed dissolution of Parliament to be voted today, and do be valid from April 24) | telma.mk," Telma TV webstite, (n.d.), http://telma.com.mk/vesti/vmro-dpmne-i-dui-zaednichki-predlozhija-raspushtanje-na-parlamentot-da-se-usvoi-deneska-da.

[8] The jurisprudence of the Constitutional Court was inconsistent, as it had declared itself as not competent in the case of two previous similar requests.

[9] Artan Sadiku and Katerina Kolozova., "Towards a Solution for the Political Crisis in Macedonia" (Institute of social sciences and humanities - Skopje, June 2016), http://www.isshs.edu.mk/index.php?newsinfo=348.

[10] meta.mk, "Hahn: It Does Not Matter If Everyone Participates, the Election Has to Be Democratic," Meta.mk, November 3, 2015, http://meta.mk/en/hahn-it-does-not-matter-if-everyone-participates-the-election-has-to-be-democratic/.

[11] Delegation of the European Union to Macedonia, "European Union - EEAS (European External Action Service) | Agreement between the Four Political Parties 20 July 2016," July 2016, http://eeas.europa.eu/delegations/the_former_yugoslav_republic_of_macedonia/press_corner/all_news/news/2016/2016-07-20_agreement_en.htm.

data, but publicized again once all changes have been made in order to provide citizens with another chance to check their data.[12]

Initially, the number of identified problematic voters reached 300 000, while, by the end of the process, which also included field checks of 89 000 voters,[13] most of these were validated. Due to being identified as deceased, 1 100 persons were removed.[14] From the list of so-called contentious voters, which consisted of 39 502 persons, after a public call, the SEC was not in a position to validate 30 477 citizens, whose details were erased from the register. However, these citizens have until 11 November 2016[15] to ask to be re-entered in the register.

The complex and cumbersome process has ended with 1 783 715 registered voters, with a possibility (of a low number of) additional entries until 11 November. For comparison, the number of voters during the early elections of 2011 was 1 821 122.

One of the most problematic issues, on which representatives of parties in the SEC had different positions was the validation of voters who do not have any proof of residence, whereby the SEC accepted the letter of the Deputy Minister, while the then Minister of Interior from the Opposition declined to sign it, although this was required by the Law. Another issue involves the "Pustec voters",[16] which was easily "addressed", such that the Ministry of Interior has cancelled the ID cards of 349 persons due to not having the right to register their residency at a particular address.[17] How these persons got on the lists in the first place was not a cause for concern for the SEC. Furthermore, the SEC is passive towards the continuing and credible allegations of the intimidation of voters reported by domestic NGOs and international organizations. This narrow understanding and practising of the responsibility of the SEC do not justify the investments made in it and the high public expectations. Consequently, despite its new composition under the Przhino Agreement, **the SEC has not managed to win over the confidence of the public.**

The results of the complex operation of 'cleansing' voter lists are questionable, as many of the initial questions leading to this operation were not essentially addressed, or, at least, explained to the public in a non-partisan manner.

The debate around **facilitating an environment conducive to fair competition among political subjects was mostly focused on media reforms** (See the Freedom of Expression section), so as to provide each party with fair representation by media outlets. The substantial amendments to the Electoral Code and the Law on Audio and Audiovisual Media Services made in November 2015 resulted in the proper and robust regulation of the airing of party campaign videos and commercials on the public broadcaster during campaign time. Although the reason behind this was to avoid over-representation of one party at the expense of another, these changes do no good in terms of stimulating self-regulation of the media, but rather result in an **intrusion into editorial independence**.[18] In addition, their impact is limited, as they refer to the election campaign period.

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[12] OSCE/ODIHR, "The Former Yugoslav Republic of Macedonia. Early Parliamentary Elections Scheduled for 5 June 2016. OSCE/ODIHR Election Observation Mission Final Report" (OSCE Office for Democratic and Human Rights, July 2016).

[13] OSCE/ODIHR, "The Former Yougoslav Republic of Macedonia. Early Parliamentary Elections Scheduled for June 5 2016. OSCE/ODIHR Election Observation Mission Final Report" (Warsaw: Organization for Security and Cooperation in Europe Office for Democratic Institutions and Human Rights, June 8, 2016), http://www.osce.org/odihr/elections/fyrom/251456?download=true.

[14] OSCE/ODIHR, "The Former Yugoslav Republic of Macedonia. Early Parliamentary Elections Scheduled for 5 June 2016. OSCE/ODIHR Election Observation Mission Final Report."

[15] State Electoral Commission of the Republic of Macedonia, "Записник од 49-Та Седница на Државната изборна комисија (In English: Minutes from the 49th Meeting of the State Electoral Comission)" (State Electoral Commission of the Republic of Macedonia, August 2016), https://drive.google.com/file/d/0B8ZpCwro9h-zM2RDODRVRjFwQzg/view?usp=embed_facebook.

[16] These were citizens living in the Republic of Albania who were allegedly added to the voter lists in the Municipality of Centar during the last local elections, so as to influence the outcome of the elections.

[17] OSCE/ODIHR, "The Former Yugoslav Republic of Macedonia. Early Parliamentary Elections Scheduled for 5 June 2016. OSCE/ODIHR Election Observation Mission Final Report."

[18] Ibid.

2.PARLIAMENT:

TO DELIBERATE OR NOT TO DELIBERATE, THAT IS NOT THE QUESTION

The trend towards low parliamentary deliberation and frequent legislative changes without prior broader consultations continued. The Parliament continued to be a "voting machine" of the Government, while neglecting its role in supervising the work of the latter. In addition, the parliamentary events that happened in the past year strengthen our hypothesis that there has been no progress during this period in respect of the work of the Parliament. Rather, there has been **stagnation since last year's backsliding** caused by the Opposition's decision to boycott the Parliament due to the wiretapping scandal.

Despite the need for improvements in the political dialogue and representation, as well as in legislative and oversight functions[19] in light of the political crisis, the work of the Parliament has not improved in the past year. The needed reforms outlined in the Przhino Agreement assumed many changes in the legislative framework.[20] However, most of these changes did **not undergo any meaningful parliamentary deliberation nor wider consultation** with key stakeholders, partly due to the deadlines stipulated in the Przhino Agreement and partly due to the fact that the negotiations for the legislative changes were made behind closed doors, during the political negotiations for the implementation of the Przhino Agreement, between the four biggest political parties.

Although the Opposition returned to the Parliament on 1 September 2015, in compliance with the Przhino Agreement, **the level of deliberation did not significantly improve**. Out of 574 laws voted on in 2015, 339 were voted on in a shortened procedure and one in an urgent procedure, compared with 234 in a regular procedure.[21] These numbers only confirm that the majority of laws passed in the Parliament undergo very little or no deliberation.

During September 2016, both the **SPP and the Public Prosecutor of the Republic of Macedonia (PPRM) presented their report** to the Parliamentary Committee on the Political System and Intercommunity Relations. The parliamentary and public discourses regarding the reports on the work of these two institutions were different. The parliamentary discussion on the SPP's report lasted four days and predominantly included questions that were in no way related to the report itself, but rather to the private life of the Special Prosecutor. There were offences directly related to Mrs. Katica Janeva, as well as attempts by MPs from the VMRO-DPMNE to discredit the work of the Prosecutor and the SPP.[22] Media reports on the events involving the Parliamentary Committee differed, depending on whether the media supported or criticized the Government. At the same time, there was very little to no information regarding the report of the PPRM to the Committee on the Political System and Intercommunity Relations. The **difference in treatment** by the Parliamentary Committee members compared to that of the governing party towards the SPP and the PPRM is yet another indicator of the biased approach and the continuous attempts of the ruling party to discredit the work of the SPP.

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[19] European Commission, "Progress Report for Republic of Macedonia 2015."

[20] The reforms required amendments to the following laws: the Electoral Code, the Law on Audio and Audiovisual Media Services, the Law on Government, and Drafting a Lex Specialis for the Special Public Prosecutor.

[21] Parliament of the Republic of Macedonia, "Извештај за работата на Собранието на Република Македонија за периодот 01.01.2015 - 31.01.2015 (In English: Report for the Work of the Parliament of the Republic of Macedonia for the Period 01.01.2015 - 31.01.2015)" (Skopje: Parliament of the Republic of Macedonia, n.d.), http://www.sobranie.mk/content/izvestai/2011-2014/IZVESTAJ%20ZA%202015%20godina.pdf.

[22] Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, "Shadow Report on Chapter 23" (Helsinki Committee for Human Rights of the Republic of Macedonia and European Policy Institute - Skopje, May 2016), http://www.epi.org.mk/docs/Shadow%20report%20-%20web.pdf.

3.GOVERNANCE:

NO SEPARATION OF STATE AND PARTY

The analysis of events and the state of affairs regarding governance in the past year highly strengthens our hypotheses that **governance has seen further backsliding**. The trend towards state capture has continued, as party domination is even more visible than in the previous year, consequently preventing the separation of state and party.

In its 2015 report, the EC noted that the governance of the country is strained by the ongoing political crisis, for which only limited responsibility was taken.[23] The long-lasting negotiations have further deepened the crisis, thus causing governance to remain strained by it. The trend towards state capture is highly visible and more salient than ever.

The governing coalition continued to be stable, even though the political crisis has **increased the distrust between the DUI and the VMRO-DPMNE**. While they have invested efforts to preserve the image of guardians of interethnic tolerance and stability among the public, ruptures along this crucial line are evident. For example, the review of the Ohrid Framework Agreement has reached a deadlock ever since the VMRO-DPMNE distanced itself from the review.[24]

Interestingly, despite his mandate having ended, former Prime Minister Gruevski often appears to be undermining the new Prime Minister, Emil Dimitriev. In an attempt to continue his omnipresence in the media and to reaffirm himself as a people's person, Gruevski (this time only in the role of Party President) has made numerous public appearances on constructions sites where Ministers and civil servants are seen reporting to him about the state of affairs regarding projects. In contrast, Prime Minister Dimitriev is rarely seen in public. This only further strengthens our hypothesis that there has **been no attempt to separate the party from the state**.

As the dates for elections were set and subsequently cancelled, the composition of the Government also changed, due to the Przhino provision to a transitional one 100 days before the elections.[25] Following the cancellation of the elections on 5 June 2015, the Government was reinstalled, without members of the Opposition. However, all members of the Government from the coalition partner, the DUI, were replaced following one more leak concerning intercepted communications. The Opposition once again entered the Government following the Przhino 2 Agreement. Consequently, **the composition of the Government has rather changed in the last year; however, this has had no major impact on its style of work**. This is one more indicator of the predominance of the parties in political life and decision-making, rather than any functioning of the institutions. The entry of Opposition members in the Government was marked with frequent accusations among the highest representatives of the Ministries. However, it should be admitted that the appointment of Ministers from the Opposition led to irregularities and more control from within the Government. Yet, the solution is not sustainable, as, in practice, this solution has not led to further strengthening of the institutions, but rather to the opposite, namely, even **more predominance of parties in political and public life in general**. In addition, **the changes of Ministers triggered changes of personnel, which caused further insecurity and uncertainty among the administrative servants**.

The ongoing political crisis resulted in **neglecting and marginalizing the commitment to the EU in the past year,** despite the declarative commitments. The Government announced the elaboration of an Action Plan for the implementation of the URPs, which was not officially deliberated on, or presented, but could be found on the website of the Secretariat for European Affairs in February 2016. The plan did not substantially address the Main Recommendations of the Senior Experts' Group on Systemic Rule of Law Issues (Priebe Report)[26] and the subsequently issued by the EC URPs.

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[23]European Commission, "Progress Report for Republic of Macedonia 2015".

[24]Alsat-M, "ВМРО-ДПМНЕ целосно се дистанцира од анализата на Рамковниот Договор (In English: VMRO-DPMNE Is Fully Distancing Itself from the Analysis of the Framework Agreement)," Алсат-М, December 9, 2015, http://alsat.mk/News/225526/vmro-dpmne-celosno-se-distancira-od-analizata-na-ramkovniot-dogovor.

[25]According to the Przhino Agreement, transitional governments appointed 100 days before elections, with a mandate to organize elections should include Ministers of Interior, Labour and Social Affairs nominated by the parties of the Opposition. Additional Deputy Ministers are appointed to the same Ministries nominated by the VMRO-DPMNE, and in the Ministries of Finance, Agriculture, Forestry and Water Supply, and Information Society and Administration nominated by the SDSM).

[26]Reinhard Priebe, "The Former Yugoslav Republic of Macedonia: Recommendations of the Senior Experts Group on Systemic Rule of Law Issues Relating to the Communications Interception Revealed in Spring 2015" (European Commission, June 8, 2015), http://ec.europa.eu/enlargement/news_corner/news/news-files/20150619_recommendations_of_the_senior_experts_group.pdf.

Nevertheless, while the implementation of the URPs was also on the agenda of the Przhino negotiations, the **issues that directly concerned the upcoming elections prevailed**, thus pushing the **full implementation of the URP recommendations to the margins of the political dialogue**. Given the decision to postpone the start of EU accession proceedings taken last year, is of utmost importance for the URP recommendations to be fully implemented, should Macedonia wish to "unfreeze" the recommendation. [27]

4.CIVIL SOCIETY:
(NON-) COOPERATION WITH THE INSTITUTIONS

The cooperation between the Government and civil society has been backsliding. Civil society organizations (CSOs) continued to provide input on policy issues and be critical of the Government when necessary. The protest movements, too, played their role in the course of the political crisis, coming up with their proposals and demands. The Government's long-lasting attempts to isolate and discredit the work of the civil society sector continued throughout 2016.

The **acknowledged progress** in the 2015 Country Report in terms of cooperation of the Government with CSOs **has not continued**. While consultations between CSOs and the Government were held up until the beginning of 2015, CSOs reported that the draft **Decision for Establishment of the Council for Cooperation Between the Government and the Civil Society** (hereinafter the Decision) "underwent drastic changes in the articles regulating the procedure for election of representatives from the associations and foundations and the election of the Council`s president"[28] What is more, the Decision itself was adopted only two working days after it was presented, leaving **no time for substantive deliberation and consultation with CSOs**. The Decision foresees that the majority of the Council members to be representatives from the state administration (14 members from a total of 27), as well as that the Government will select the President from these representatives. Contrary to this, the proposed version of the second draft envisaged a more transparent and open process for the selection of Council members.[29]

The Balkan Civil Society Development Network and the Macedonian Center for International Cooperation have called on all interested organizations to support a **statement**[30] to be sent to the General Secretariat of the Macedonian Government, demanding for the above-mentioned changes to be removed from the draft Decision. As no measures by the Government were undertaken to resolve the issue and revise the Decision, the **signatories of the statement declared a boycott of the work of the Council**. This presents only a continuation of the practice of the Government and governmental institutions to invite CSO representatives to take part in policy discussions without taking their recommendations into account in further steps of the decision-making process. This being said, while **the policy-making process is formally "inclusive", in practice CSOs' input is not fully appreciated and considered**.

The dissatisfaction with the unfolding of the political crisis and the Parliament's decision to hold elections on 24 April, predominantly supported by the VMRO_DPMNE, without the conditions for free and fair elections still not being met, has also resulted in a **series of joint letters to EC, EU and USA representatives**.[31] **Signed by over 70 CSOs and publically presented in front of the EU Delegation in Skopje,** the European institutions, representatives and diplomats were asked to act in accordance with European values, further support the process of reforms and insist on the fulfilment of the conditions for free and fair elections before an election date is scheduled. A joint announcement[32]

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[27]"Priebes Report Contains Reform Instructions Upon Which Macedonias Recommendation for EU Negotiations Depends - Independent.mk," Independent - The Macedonian English News Agency, n.d., http://www.independent.mk/articles/32715/Priebe%27s+Report+Contains+Reform+Instructions+Upon+Which+Macedonia%27s+Recommendation+for+EU+Negotiations+Depends.

[28]Balkan Civil Society Development Network, "Series of Concerns over Sudden Adoption of the Decision for Establishing Government Civil Society Council in Macedonia," Http://www.balkancsd.net, n.d., http://www.balkancsd.net/series-of-concerns-over-sudden-adoption-of-the-decision-for-establishing-government-civil-society-council-in-macedonia/.

[29]Macedonian Center for International Cooperation and and Balkan Civil Society Development Network, "Reaction to the Adoption of the Decision on the Establishment of the Council for Cooperation between the Macedonian Government and Civil Society," www.balkancsd.net, n.d., http://www.balkancsd.net/novo/wp-content/uploads/2016/05/94-3-40-31-Reaction-to-the-Decision-Est-Council_final.pdf.

[30]Ibid.

[31] www.okno.mk, "Писмо до ЕУ И САД од 78 организации: Бараме вистински реформи за фер и демократски избори! (In English: A Letter to EU and the USS from 78 Organisations: We Ask for Real Reforms for Fair and Democratic Elections)," Okno, January 2016, http://okno.mk/node/53125.

[32] "Public Announcement on EU-USA Assessment on Elections in Macedonia," February 18, 2016, http://www.epi.org.mk/docs/public-announcement-on-EU-USA-assesment-on-elections-in-Macedonia-18022016-EN.pdf.

on the **EU-USA assessment of elections**[33] was also sent to EU and US representatives, the heads of diplomatic missions and EC and EP representatives, where a group of CSOs and think tanks reiterated their position that it is not possible to hold elections on 24 April, given that neither the Przhino Agreement nor the URPs had been implemented. Lastly, a major attempt to contribute to resolving the crisis was the initiative of several CSOs, academics and experts in producing the **Blueprint for Urgent Democratic Reforms**.[34] With this blueprint, civil society provided guidelines and detailed actions for achieving progress in the following policy areas: public finance and the economy; the judiciary; the fight against corruption; elections and the electoral system; the media; public administration; control over police work, security agencies and counterintelligence agencies; parliament; civil society; social protection, welfare and sustainability; education and youth policies; and the environment. All of recommendations were meant to contribute to restoring the democratic standards and values, as well as to regaining citizens' trust in the key public institutions. The blueprint included a recommendation to form an expert government in order to set a level playing field for elections.

Last but not least, **CSOs have demanded, on several occasions, to be included in the Przhino negotiation process**, either through discussions and consultation, or through monitoring. While this should have happened under the Annex to the Przhino Agreement signed in July 2016, it was **not implemented in reality**.

The political crisis has resulted in multiple protest movements since 5 May 2015, yet the biggest and the longest-lasting one was the Protestiram (I Protest) movement, which later became the **Colourful Revolution**. While previously held predominantly as protest marches, the **President's decision to pardon 57 suspects** against whom criminal charges had been filled and criminal procedures initiated stirred up the movement. The protesters came up with their own **demands**,[35] including revoking the pardon and the resignation of President Ivanov, revoking the decision on holding elections (this time on 5 May) before key criteria were met and forming a special court unit within the Criminal Court for handling the cases of the SPP. While being held every day until the beginning of summer 2016, the protests are now less frequent and predominantly held in support of the SPP.

In an environment deeply divided along partisan lines, it was easy for the ruling party to spin all of civil society's actions and present them as collaborators of the Opposition. What is more, a few pro-Government media even published documents on the income of several members of prominent CSOs, academics and experts,[36] so as to further distort the reality and frame the public discourse in a way that benefits the ruling party. Later, this publication of personal records was ruled down by the Directorate for Data Protection.

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[33] Delegation of the European Union to Macedonia, "Joint EU-US Letter to Prime Minister Dimitriev," January 29, 2016, http://eeas.europa.eu/delegations/the_former_yugoslav_republic_of_macedonia/press_corner/all_news/news/2016/29-01-29_jointletter_en.htm.

[34] "Blueprint for Urgent Democratic Reforms," June 2016, http://www.epi.org.mk/docs/Blueprint_ANG_WEB.pdf.

[35] www.protestiram.info, "Proclamation for Joint Action. Protests Macedonia 2015/2016," April 2016, http://protestiram.info/?page_id=40.

[36] kurir.mk, "Има пари, нема мир – 6.000.000 евра за платеничката војска на Сорос (In English: There Are Money, There Is No Peace - 6.000.000 Euros for Soros Mercenary Army," Kurir.mk, May 27, 2016, http://kurir.mk/makedonija/vesti/ima-pari-nema-mir-6-000-000-evra-za-platenichkata-vojska-na-soros/.

5. CIVILIAN OVERSIGHT OF THE SECURITY FORCES: THE 'VEIL OF IGNORANCE'

The functioning of the oversight bodies continued to be very weak and obstructed by the ruling coalition. The Committee for supervising the work of the Security and Counter-intelligence Directorate (UBK) and the Intelligence Agency (IA) as well as the Committee for oversight of the implementation of the special investigation into the interception of communications by the Ministry of Interior (MOI), the Financial Police Management, the Customs Management and the Ministry of Defence did not achieve any substantive results and/or conclusions, which supports our hypothesis of **backsliding in this area**.

Much like in 2015, sufficient **responsibility** for the failure of the intelligence service to prevent the interception of communications **has not been taken**. There are two committees: one has oversight of the security forces within the Parliamentary Committee for supervising the work of the UBK and the IA, while the other has oversight of the implementation of the special investigation into the interception of communications by the Ministry of Interior, the Financial Police Management, the Customs Management and the Ministry of Defence. Nonetheless, following the work on the sessions of the former committee is solely based on media reports, given that, other than the agenda, there are **no conclusions or minutes from the meetings** published on the website of the Parliament, which indicates a **lack of transparency**.

During 2016, the **committee for supervising the work of the UBK and the IA** held four meetings from January to August, deliberating on the reports on the security agencies, made visits to the agencies, reported on the work of the committee, and collected information regarding the events related to the equipment for expenses in the UBK and the current security situation in Macedonia pertaining to the migration crisis and possible terrorist threats.

Upon the initiation of the SPP's third case for **destroying the equipment for the interception of communications**,[37] the public legitimately questioned the ability of the committee to monitor the work of the UBK, given that they had no record of the equipment in the first place. However, the President of the committee stated that, even after requests were made, the UBK did not provide a detailed report of all of their equipment and the technical specificities.[38] There are **no public records as to the conclusions made by the committee** upon the review of the working plans of both the UBK and the IA for 2015.

The **committee for oversight of the implementation of the special investigation into the interception of communications by the MOI, the Financial Police Management, the Customs Management and the Ministry of Defence** has held a total of four meetings since its establishment in 2015, with its members having adopted the rulebook at the first meeting, without representatives from the Opposition being present. That said, the committee **failed to adopt the report on their work in 2015**, while members from the different political parties continuously transferred the blame from one to the other.

Both committees failed to present reports on the interception of communications scandal, as required by the Przhino Agreement.

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[37] Deutsche Welle (www.dw.com), "Уништувањето на опремата за прислушување е третиот случај на СЈО (In English: Destroying of the Equipment for Interception of Communications Is the Thrid Case of the SPP)," DW.COM, March 30, 2016, https://goo.gl/CBlsz5.

[38] Deutsche Welle (www.dw.com), "Локвенец: Од УБК Баравме Податоци За Опремата, Ама Не Ни Ги Дадоа! (In English:Lokvenec: We Requested Data on the Equipment from UBK, They Did Not Prove Them to Us)," DW.COM, March 31, 2016, https://goo.gl/7GZC3a.

6. PUBLIC ADMINISTRATION REFORM

THE EVERLASTING REFORMS TAKE A BREAK

Even though public administration reform (PAR) has been perceived to be among the most important and urgently needed reforms in respect of EU integration, it has been sidelined. Moreover, even though separation of state and party was one of the benchmarks for having free and fair elections, the continued pressure over the administration on behalf of the governing party continued. The work on a new strategy was launched. Equitable representation has improved, but the concepts of integration in the workplace and diversity management have not been applied. Therefore, there has been no progress in the field of PAR, but rather **stagnation** for the past year.

Similar to some other processes, in light of the political crisis PAR was also **neglected**, thus there have been no major changes since the last assessment of the EC in respect of PAR. The process of **drafting a new strategy for PAR is ongoing** and includes representatives of relevant institutions and CSOs. However, as there is **no official evaluation** of the previous PAR strategy, the process of drafting a new one is significantly burdened.

The **concerns regarding the implementation of the merit system and principles still remain**, especially as the country has been in a pre-electoral period since the beginning of the year. Even though the Electoral Code was amended to include a moratorium on new recruitments during the election campaign period, the existing administrative body remains under pressure since elections have been postponed twice already. Consequently, the political crisis and perspicuous focus on elections have resulted in **further politicization** of the public administration. The changes in the personnel, which followed changes of Ministers, have caused further instability among administrative servants, especially in the Ministry of Interior.

EPI's recent analysis[39] suggests that one of the greatest achievements from the implementation of equitable representation in the public administration is the numerical increase in non-majority employees in the administration. However, the main barrier for further implementation, along with diversity management and achieving equality in the workforce, is the politicization of the administration. Employment and promotion based on party membership hinder the proper implementation of equitable representation and undermine opportunities for creating an administration that is representative of all groups in society, appreciative of diversity and free of discrimination.

Equitable representation is increasingly considered as a monopolized process, which applies only to the Albanian community, while smaller non-majority communities have been sidelined in the process. Furthermore, there seems to be a lack of commitment within leadership structures for the implementation of equitable representation and diversity management. The members of non-majority communities are mostly present in the institutions run by members of these communities.[40]

[39] Malinka Ristevska Jordanova et al., Life and Numbers. Equiable Ethinc Representation and Integration at the Workspace (European Policy Institute - Skopje, 2016), http://www.epi.org.mk/docs/Life%20and%20numbers_ENG_Final%20version.pdf.

[41]Ibid.

7. REFORM OF THE JUDICIARY

RULING OUT THE RULE OF LAW

The pressure imposed by the Executive Branch on the Judicial Branch in times of serious political crisis is highly visible. Instead of reform, **'soft, reform-like wrapping'** is being offered, which provides the form, but not the substance of reform. The creation and functioning of the SPP - which promotes a different approach to carrying out this duty - has also "woken up" and provoked reactions from the "regular" Public Prosecutor while the court decisions so far on the SPP's proposals indicate a strong influence from the corrupted Government over the Judiciary. This reinforces our hypothesis that the situation regarding the **Judiciary has been backsliding.**

The past year was marked by a **serious change in the judicial framework** system with the establishment of the SPP, the institution in charge of investigating and prosecuting cases surrounding and arising from the unauthorized interception of communications. Looking at the Judiciary as a whole, although the SPP had the spotlight in the past year, there have been numerous developments, which have caused **further backsliding** in this area.

The **reforms in the area of the Judiciary have not being substantially implemented**. Instead, only **'soft, reform-like wrapping'** is being offered, which takes the form, but not the substance, of the reforms.[41] Towards the end of 2015, a consultative meeting with relevant stakeholders was organized by the Ministry of Justice, where a **draft strategy for the reform of the Judiciary** was presented. Nevertheless, adopting a strategy in a highly sensitive period of political crisis without broader discussion is not likely to reflect the systemic shortcomings pointed out by the Priebe Report and the URPs. Furthermore, the 2016 budget of the country has envisaged financial resources for improving judicial efficiency and efficacy, with EUR1.25m allocated for reforms to the Judiciary under categories such as purchasing furniture, equipment, gadgets and appliances, as well as the construction.[42]

A recent analysis revealed that there is a very **low level of trust in the work of the Judicial Council and the Council of Public Prosecutors**, which is noteworthy if we take into account that these are the two institutions that should guarantee the independence of the Judiciary from political influence. Thus, instead of strengthening the independence and accountability of the Judiciary, these two institutions seem to have performed a different role.[43] For example, although the appointment of the SPP was an urgent procedure, the Council of Public Prosecutors obstructed the commencement of the work of the SPP by not approving the team requested by the Special Prosecutor, which credibly suggests **political influence** over the decisions of the Council of Public Prosecutors.[44]

Further events that have once again put in question the independence of the judiciary were related to the work of the SPP. Indeed, so far, **almost all of the SPP's requests for detention were rejected by the Basic Court in Skopje 1**. Taking in account that, to date, the Basic Court has not rejected any request for detention from the Public Prosecution Service,[45] except for one house detention, this brings into question the former's independence and indicates possible political pressure, taking into account that, in practice until now, it accepted nearly all the requests of the Public Prosecutor for detention.

The Constitutional Court has not yet deliberated on the request for constitutionality of the SPP, thus continuing the uncertainty of this institution. However, under Przhino 2, the parties took on an obligation to ensure constitutionality following the eventual Constitutional Court decision.

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[41] Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, "Shadow Report on Chapter 23."

[42] Ibid.

[43] Dane Taleski, Marko Kmezic, and Lura Pollozhani, "Improving Checks and Balances in the Republic of Macedonia: Judicial Control of the Executive," Checks and Balances in the Republic of Macedonia: How to Make Them Work?, Dialogues for Vision - European Policy Institute - Skopje, 2016, http://www.epi.org.mk/docs/D4V_Democracy%20and%20Rule%20of%20Law_en.pdf.

[44] Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, "Shadow Report on Chapter 23."

[45] Ibid.

In September 2016, the Council of Public Prosecutors once again elected Mr. Petar Anevski as its President, even though, according to the Law on the Council of Public Prosecutors,[46] the mandate of the President is two years, without a right to re-election. Mr. Anevski later publicly stated that this was not against the law, as his re-election is in the context of a new mandate, such that it does not present a continuation of his previous mandate. Nevertheless, this decision of the Council calls the competence, independence and impartiality of the members of the Council into question.

The **concerns regarding the independence of the Judiciary remain**. The appointment of judges and court presidents by the Judicial Council has been made without any previous changes to the election system. Moreover, a record of a number of judges was appointed the day before the planned and prolonged dissolution of the Parliament, in anticipation of early elections.[47]

In December 2015, a **law regarding new salary supplements for judges and public prosecutors** was adopted in shortened procedure. As the Shadow Report on Chapter 23 argues, "the obvious aim of these salary supplements is to win over the judges and public prosecutors in the pre-election period and to invest in their subservience to political behests".[48] Additionally, along with the law on the employees from the SPP, salaries were also raised for the Public Prosecution Service, with the attempt to "neutralize" the latter's discontent, which arose on account of the introduction and position of the SPP.[49]

The **Supreme Court of the Republic of Macedonia** has announced a new central database where all the judgements from all the courts in Macedonia should be published. Nevertheless, it remains unclear whether the database will also contain judgements that have already been published on specific court websites, thus making the substance of this intervention questionable. "If the database does not incorporate previous decisions as well, this activity is not only inadequate in terms of the priorities for timely publication of all court judgements, but it goes against the spirit of this priority, which primarily relates to the publication of a judgement by a judge within a statutory deadline."[50]

In its opinion of December 2015,[51] the Venice Commission assessed the 2015 initiative on amending the Constitution as problematic, more so since it was passed by the ruling coalition during the Opposition's absence from the Parliament. For the Commission, such important reforms as these should receive the widest possible political support, otherwise it **could be seen as an attempt by the governing coalition to use the newly established bodies to control the Judiciary**.[52]

The **Commission also stated that it is not in favour of establishing a separate body for disciplinary responsibility** (Council for Determining Facts and Initiating a Procedure to Determine the Responsibility of a Judge), and that these functions should be returned to the Judicial Council, a position that Network 23 reiterated since its first Shadow Report published in 2015. Finally, the Commission stated that the constitutional reforms started in 2014 and the legislation amendments from 2015 should be approached systematically, at both the constitutional and legislative levels.[53]

The **main concern regarding professionalism and competence remains the appointment of judges**, as it continued to lack **any improved criteria for selection**. Namely, no steps whatsoever have been undertaken to change the criteria for appraising and promoting judges. At present, these criteria are based exclusively upon quantitative

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[46] "Law on the Council of Public Prosecutors in the Republic of Macedonia" (Official Gazette of the Republic of Macedonia, 150/2007 and 100/2011, n.d.).

[47] European Policy Institute - Skopje, "Monitoring Brief for September 2016 with Regard to the Monitoring of Chapter 23 Judiciary, Fight against Corruption and Fundamental Rights" (European Policy Institute - Skopje, September 2016).

[48] Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, "Shadow Report on Chapter 23," page 15.

[49] Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, "Shadow Report on Chapter 23."

[50] Ibid., page 21.

[51] The Venice Commission announced its opinion on legislation referring to disciplinary responsibility and the evaluation of judges, more specifically regarding the 2015 proposed amendments referring to the Law on the Courts, the Law on the Judicial Council of the Republic of Macedonia and the already-adopted Law on a Council for Determining Facts and Initiating a Procedure to Determine the Responsibility of a Judge.

[52] European Policy Institute - Skopje, "Monitor: Implementation of Urgent Reform Priorities" (European Policy Institute - Skopje, 2015), http://epi.org.mk/docs/Network%2023_monitoring-report-15-30%2012%202015.pdf.

[53] "Venice Commission, "Oppinion on the Laws on the Disciplinary Liability and Evaluation of Judges of the Former Yugoslav Republic of Macedonia Adopted by the Venice Commission at Its 105th Plenary Session (Venice, 18-19 December 2015).," Opinion No. 825 / 2015 (Strasbourg: Venice Commission, December 21, 2015).

criteria of efficiency, which do not foreground the expertise and integrity of judges. As the Network 23 Shadow Report notes, "[t]he interventions in the system of appraisal, promotion and appointment of judges within the span of more than a few past years, resulted in an **'open door' for political influences over the judiciary**".[54]

Regarding the **Academy of Judges, slight progress** has been observed due to the Law Amending the Law on Judges and Prosecutors in December 2015.[55] The amendments refer to the introduction of electronic protection when conducting examinations, tighter control over examinations, and sanctions for any violation of these provisions. With these amendments, the transparency should be increased by requiring the announcement of a public call for candidates, among professors and prominent lawyers, to become members of the Programme Council. The 2016 budget for the Academy was also increased in comparison to the previous two years.[56]

Last but not least, due to dissatisfaction with the amendments to the Law on Judicial Service, which was adopted in a shortened procedure and with no public discussion, **judicial officers staged a three-day strike** in March 2016. The strike, however, did not result in an adequate response from the Ministry of Justice, which further confirms that the judicial administration remains neglected, consequently resulting in regress instead of progress with regard to the rights of judicial officers.[57]

8. FIGHT AGAINST CORRUPTION: IS THERE A PILOT ON THE PLANE?

Although the Law on the Protection of Whistle-blowers is a step forward in the fight against corruption, the passiveness and failure of the competent institutions, including the State Commission for Prevention of Corruption (SCPC), to react to the emerged wiretapping scandal, which revealed abuse of office by high-ranking state officials, is a major step backwards. At the same time, this is a **strong indicator of backsliding in the area of anti-corruption,** given that all hopes in resolving the cases, which have arisen from and are related to the content of the unlawful interception of communications, are now directed towards the SPP.

The **failure of the SCPC to react to the content of the published wiretap**s can only confirm that its work in the past year has been passive and ineffectively selective. More so, the new anti-corruption programme[58] (2016-2019) of the SCPC does not include any planned actions, which address the problems from the wiretapping scandal. Additionally, the process of preparing and drafting the programme was not inclusive as it did not include all members of the Platform Against Corruption, nor consultations with experts and/or citizens' associations. One of the main reasons for this passivity by the SCPC is the selection of members who are not particularly active in the fight against corruption.[59]

Having said the above, it is fair to conclude that **the major role in fighting corruption in the country has been left to the SPP**, which, despite the obstructions from the Judiciary and other state institutions, continues to work at full capacity on resolving cases, which have arisen from and are related to the content of the unlawful interception of communications.

The political crisis has made the promulgation of the **Law on the Protection of Whistle-blowers** an urgent matter. As the content of the law was agreed upon by the four political parties involved in the negotiations for implementation of the Przhino Agreement, the preparation did not include broader consultations with CSOs and experts, nor did it include any meaningful deliberation in the Parliament. The parties, however, did agree to **request an opinion from the Venice Commission**, which recommended **further clarifications** on what is considered as public interest regarding whistle-blower protection and also reinforcing Article 6, which covers protecting whistle-blowers. The **recommendations are still not implemented**. Nevertheless, the mere fact that this law has been voted on should be considered a step forward in dealing with corruption.

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[54] Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, "Shadow Report on Chapter 23," page 23.
[55] "Law on Judges and Prosecutors" (Official Gazette of the Republic of Macedonia, 231/2015, 2015).
[56] Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, "Shadow Report on Chapter 23," page 23.
[57] Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, "Shadow Report on Chapter 23."
[58] Државна комисија за спречување на корупција, "Државна програма за превенција и репресија на корупцијата и превенција и намалување на појавата на судир на интереси со акционен план 2016-2019 (In English: State Program for Prevention and Repression of Corruption and Prevention and Decreasing of the Conflict of Interests with an Action Plan 2016-2019)" (Државна комисија за спречување на корупција, 2015), https://goo.gl/sjyn71.
[59] Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, "Shadow Report on Chapter 23."

9. FIGHT AGAINST ORGANIZED CRIME

WE HAVE THE LAWS, NOW WHAT?

The failure of the Judiciary to respond to major abuses relating to the functions of high-ranking officials, which indicate the existence of organized crime, as well as the poor and selective implementation of the legal framework, supports our hypothesis that the fight against organized crime is yet another area that has seen **backsliding** in the past year.

While the **legal framework** is relatively well aligned with international standards, it remained being **poorly and selectively applied**. The lack of any response from the institutions to the wiretapping scandal has demonstrated the lack of political will to fight organized crime, as well as the high-level impact of the ruling parties on the law enforcement agencies. As indicated previously, the main role in the fight against organized crime now belongs to the SPP.

The Head of the Department for Organized Crime of the Public Prosecutor's Office was nominated and elected a **judge in the European Court of Human Rights**, which was assessed by the broader public as highly controversial.

10. FIGHT AGAINST TERRORISM:

POSITIVE DEVELOPMENTS

The **fight against terrorism marked some progress**, even though the emphasis remains on dealing with consequences, rather than with their prevention. The trend towards legislative regulation, as opposed to grass roots intervention and community engagement, needs to change, especially in the midst of major terrorist attacks across Europe.

The fight against terrorism is another area that **has not received the needed attention,** due to the focus on the political crisis, even though the country plays a major role in regulating the flow of the migrants entering Europe. The **National Strategy for Combating Terrorism** was approved by the Government on 15 March 2016, yet there is **no separate strategy for countering violent extremism (CVE)**. Nonetheless, there are 'alleged plans' to include other relevant state institutions (such as the Ministry of Education and the Ministry of Labour and Social Policy), as well as civil society and religious institutions, in the Counterterrorism Coordinator's action plan. As such, this has been seen as a step forward in fighting terrorism, as the importance of these actors has been recognized.[60]

To date, Macedonia has taken **several measures in the fight against terrorism**. For example, besides being a member of the Anti-ISIS Coalition, the national authorities also utilize Interpol's database on foreign terrorist fighters, although they report that the country is still facing a lack of access to EU databases on foreign fighters.[61]

Radicalization and violent extremism have been high on the agenda of Macedonian institutions, yet the **approach to resolving these issues has remained inadequate**. If we take into account the theory that one in nine volunteers fighting for foreign militaries joins a military group once they return home,[62] as well as the fact that there are 110 fighters from Macedonia in Syria, out of which 86 have returned home,[63] one can assume that there are threats and dangers, as these individuals might become involved in violent activities. As pointed out in the 2015 Country Report by the EC, "the phenomenon of foreign terrorist fighters needs a dedicated approach by the intelligence and law enforcement community and a coherent judicial policy towards offenders".[64]

[60]"Kaltrina Selimi and Filip Stojkovski, "Assessment of Macedonias Efforts in Countering Violent Extremism, View from Civil Society" (Analytica, October 2016), http://www.analyticamk.org/images/Files/extremism-en-updated-FINAL-web_ceb98.pdf.

[61]Ibid.

[62]Filip Stojkovski, "Поради загубите на територија во Ирак и Сирија, ИСИС би можеле да се фокусираат на напади во Европа (In English: Due to Loss of Teritory in Iraq and Syria, ISIS Might Focus on Attacks in Europe)," n.d., http://www.analyticamk.org/images/Files/Commentary/2016/comment_extra1_mk_0598f.pdf.

[63]President of the Republic of Macedonia, "Обраќање на Претседателот на Република Македонија, Д-Р Ѓорге Иванов (in English: Speech of the President of the Republic of Macedonia, George Ivanov)," Official Website of the President of the Republic of Macedonia, June 22, 2016, http://pretsedatel.mk/mk/2011-06-17-09-55-07/2011-07-19-10-40-39/3849.html.

[64]European Commission, "Progress Report for Republic of Macedonia 2015."

A recent analysis[65] by the Analytica think tank points to the danger of foreign fighter returnees recruiting at the grass roots level, mostly through social media and other types of online radicalization. While the Macedonian strategy predominantly **focuses on executive and judicial powers, little to no community engagement is accounted for.** The latter, however, is of immense importance, given that the majority of the interviewees (mostly university and high school students) knew someone that had gone to Syria or Iraq. They also have a low level of trust in state institutions and their abilities to make a difference in CVE, which confirms the need to equip communities "with the right tools and skills so that they can address this threat that is hurting each individual community".[66] That said, the number of Macedonian citizens joining ISIS or similar groups in Syria or Iraq has significantly dropped since the first police operation, known as "Cell".[67]

11. FUNDAMENTAL RIGHTS AND PROTECTION OF MINORITIES: MORE PRESSURE, LESS EQUALITY

It is safe to note that there have been no major improvements. The issues concerning the Ombudsman, torture, and inhumane or degrading treatment or punishment, as well as in respect of prison and detention centres, remain as problematic as they were during 2015. The implementation of legislation on human rights remains weak, due to the pressure from the governing coalition, with selective justice still applied. Major breaches in human rights in the past year were noted during the Colourful Revolution protests. Therefore, we can conclude that there has been **severe backsliding in the area of human rights**.

The Ombudsman's budget for 2016 has been increased, yet given the increase was a mere 1% compared to the 2015 budget, one can only conclude that **increasing the capacities of this institution was not foreseen**. What is more concerning, however, is the fact that the budget of this institution remains **financially dependent on the Ministry of Finance**, hence on the Government, which does not ensure independence of the institution.

In September 2016, the **Law on the Ombudsman was amended, without accounting for the majority of the Priebe recommendations**. In addition, in order to reinforce its authorities, the Law on the Ombudsman needs to be consistently applied, especially in the area of investigation and promoting human rights,[68] which the latest amendments do not provide for. Furthermore, the **two Deputies to the Ombudsman appointed by the** Parliament in October were both political representatives of the Government's coalition parties, rather than "personalities whose activities in the area of the protection of human rights are evidenced, as well as have any reputation to carry out this office',[69] as required by the Law on the Ombudsman.

The civil sector has continued to advocate for a **zero tolerance policy** regarding acts of torture by public officials. Still, the **PPRM remained passive regarding cases of torture**, especially when performed by police officers. The victims of torture have still not been provided with proper legal, medical, psychological and social support by the state.[70]

The prisons remain **overcrowded**: "the total capacity for housing prisoners is 2,026, which means that the prisons are 156% overcrowded; put another way, there are 156 persons, on average, living in facilities meant for 100 persons".[71] At the same time, the **living conditions in prisons remain substandard** and there are records of inadequate healthcare, the non-application of socialization programmes, the absence of educational programmes, the lack of hygiene,[72] not being allowed to go outside for longer than an hour, limited correspondence etc.

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65 "Kaltrina Selimi and Filip Stojkovski, "Assessment of Macedonias Efforts in Countering Violent Extremism, View from Civil Society."
66 Ibid., page 66.
67 Ibid
68 Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, "Shadow Report on Chapter 23."
69 "Law on the Ombudsman" (Official Gazette of the Republic of Macedonia, 60/2003 and 143/2008, n.d.).
70 Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, "Shadow Report on Chapter 23."
71 Ibid., page 30.
72 Helsinki Committee Of The Republic Of Macedonia, "Helsinki Committee Of The Republic Of Macedonia - Special Report: Visit to the Special Institution in Demir Kapija (in Macedoian: Посебен Извештај: Посета на специјалниот завод во Демир Капија)," June 27, 2016, http://www.mhc.org.mk/reports/424#.V_2Qcfl97IV.

Disproportionate and excessive force was used by the police during protests, which took place on 5 May 2015 and throughout the end of the year, as well as in the course of 2016.[73] The Public Prosecution Service, however, has taken no single ex officio procedure against police officers in this instance to date.[74] In addition, there were cases of **restricting the right to the freedom of movemen**t and simultaneously the right to public assembly by police officers, without authority. This was the case with a protest against the decision by the Constitutional Court to initiate procedures regarding the constitutionality of amendments to the Law on Pardons from 2009, which was previously registered with the Ministry of Interior. The protest, however, did not occur, as the venue was occupied by people organized by Stevcho Jakimovski, the leader of the GROM political party, which is a member of the ruling coalition as well.

Several protesters from the Colourful Revolution were apprehended and some of them where **charged in connection with misdemeanours**, as well as held at a police station longer than the allowed period for detention. Some protesters even received house arrest, while others received criminal charges.[75] The reaction of the public to these events was that they were regarded as **nothing more than a warning to other citizens considering further gatherings and protests**. Such actions present a breach of Article 21 of the Macedonian Constitution, which prescribes that citizens have the right to gather and publicly protest without any previous announcement or special permission.[76] It is important to note that there were no charges brought against participants in the violent protests in front of the Municipality of Centar in 2015,[77] which is yet another indicator of selective justice being applied.

There has also been a **notable increase in the pressure applied by governmental institutions on civil associations**, in the form of so-called smear campaigns by pro-Government media.[78]

12. FREEDOM OF EXPRESSION

EXPRESSION UNDER OPPRESSION

Iinstead of focusing on long-term reforms and systemic solutions, the media reforms agreed in the past year have only focused on short-term fixes in light of the upcoming elections. That said, we cannot state there has been progress in this area. **Indeed, the situation has been backsliding.**

In common with other areas, there have been **no major changes** in respect of freedom of expression and media pluralism since the 2015 Country Report. The media has remained under **heavy pressure from the ruling party**, while **self-censorship has continued to be practised by some journalists**. In the context of resolving the political crisis, media reforms were one of the two key points of discussion. **Freedom House reported that Macedonia's status declined from 'partly free' to 'not free'**,[79] due to the revelations indicating large-scale and illegal government wiretapping of journalists, corrupt ties between officials and media owners, and an increase in threats and attacks on media workers.

The past year was marked by **further violation of the legal regulations in the Law on Media and the Law on Audio and Audiovisual Media Services**. Up until the end of March 2016, the Agency for Audio and Audiovisual Media Services (henceforward the Agency) initiated a total of 87 supervisions on its own initiative. The Agency noted **17 violations** of the Law on Media and the Law on Audio and Audiovisual Media Services committed by broadcasters, three violations by publishers of print media and seven violations by operators of public electronic communication networks.[80]

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[73] European Policy Institute - Skopje, "Monitoring Brief for June 2016 with Regard to the Monitoring of Chapter 23 Judiciary, Fight against Corruption and Fundamental Rights," June 2016, http://www.epi.org.mk/docs/Monitoring%20brief_Chapter%2023_Network%23_June%202016.pdf.

[74] Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, "Shadow Report on Chapter 23."

[75] European Policy Institute - Skopje, "Monitoring Brief for July 2016 with Regard to the Monitoring of Chapter 23 Judiciary, Fight against Corruption and Fundamental Rights," July 2016, http://www.epi.org.mk/docs/Monitoring%20Brief%20for%20July%202016_Chapter%2023_EN.pdf.

[76] Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, "Shadow Report on Chapter 23."

[77] Helsinki Committee Of The Republic Of Macedonia, "Helsinki Committee Of The Republic Of Macedonia - Protests and Detentions," April 25, 2016, http://www.mhc.org.mk/announcements/400%23.VysJtIR97IU#.V_1ifPl97IU.

[78] European Policy Institute - Skopje, "Monitoring Brief for May 2016 with Regard to the Monitoring of Chapter 23 Judiciary, Fight against Corruption and Fundamental Rights," May 2016, page 7, http://www.epi.org.mk/docs/Monitoring%20brief%20on%20Chapter%2023_May%202016_EN.pdf.

[79] "Freedom of the Press 2016. The Battle for the Dominant Message" (Freedom House), accessed October 24, 2016, https://freedomhouse.org/sites/default/files/FH_FTOP_2016Report_Final_04232016.pdf.

[80] Neda Chalovska, Voislav Stojanovski, and Aleksandar Jovanovski, "Shadow Report on Chapter 23," page 39.

As media reforms were one of the two issues that the Przhino negotiations narrowed down to, pre-electoral, balanced media reporting has been of immense importance. In that respect, the biggest pro-Governmental Sitel TV conducted several interviews with members of the Opposition party, including one with Party President Zoran Zaev. In particular, the latter interview was seen as one that **violated professional journalistic principles and standards**, thus the Agency, journalists' associations, the international community and the wider public condemned it strongly. In response, the Council of Media Ethics of Macedonia drafted the **Charter of Ethical Reporting during the Elections**,[81] which was signed by most of the media houses, including Sitel TV.

Despite amending the **Electoral Code** regarding media reporting during the election campaign period, so as to provide balanced media reporting, even though the country never entered into the campaigning period, **the trend towards media reporting with strong support for the ruling party has continued**. The main identified strategies were that the ruling party, the VMRO-DPMNE, has used the most influential TV news programmes as their marketing tool, while there exists selective censorship of the expression of political ideas, as well as orchestrated media showdowns.[82] The last report on monitoring the media content by ResPublica generally found slight improvements in respect of media pluralism, in the sense that side-taking, propagandistic reporting, demonizing of political subjects and including political marketing to an informative programme (TV news) have "softened".[83] This, however, is far from enough in order to ensure proper balanced and unbiased reporting, free from political pressure.

The long-lasting negotiations on media reforms yielded the **establishment of an ad hoc body for monitoring the compliance with media provisions from the Electoral Code within the Agency for Audio and Audiovisual Media Services**. In addition, the parties have agreed that the SDSM will nominate a Chief Editor of informative programmes at the public broadcaster, which will assume his/her position 100 days before elections.[84] Lastly, a new law for governmental advertising was proposed by the Ministry of Information Society and Administration, but was withdrawn from procedure upon strong international pressure.

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[81] Council for Media Ethics of Macedonia, "Charter on Ethical Reporting During Elections," n.d., http://semm.mk/en/news/2015-08-11-15-03-18/204-2016-01-27-13-41-21.

[82] ResPublica, "First Monthly Report from the Monitoring of the Media Content" (Institute of Communication Studies, December 2015), http://respublica.edu.mk/modem/23-18-dek emvri-2015/First-Monthly-r eport-MODEM-28_12_15%20EN_PDF.pdf; ResPublica, "Second Monthly Report Based on the Monitoring of Media Content (19th December 2015 29th January 2016)" (Institute of Communication Studies, n.d.), http://respublica.edu.mk/2016-03-08-11-03-03/96-second-monthly-report-based-on-the-monitoring-of-media-content-19th-december-2015-29th-january-2016; ResPublica, "Third Monthly Report from the Monitoring of the Media Content" (Institute of Communication Studies, n.d.), http://respublica.edu.mk/modem/06-04-mart-2016/Third-Monthly-report-MODEM_EN_opt.pdf; ResPublica, "Fourth Monthly Report from the Monitoring of Media Content" (Institute of Communication Studies, n.d.), http://respublica.edu.mk/modem/03-do-04-2016/Fourth-Monthly-report-MODEM_ENG_opt.pdf; ResPublica, "Monitoring of Media Content through the Rapid Response Media Mechanism (April 16 - Maj 7, 2016)," ResPublica, n.d., http://respublica.edu.mk/modem5-en.

[83] ResPublica, "Извештај од следењето на медиумските содржини 05 - 16 септември 2016 (In English: Report from the Monitoring of Media Content 05-16 September 2016)," ResPublica, n.d., http://respublica.edu.mk/shestti-mesechen-izveshtai.

[84] meta.mk, "What the Parties Agreed to: New Editor at MTV, Ad Hoc Body for the Media and Support for the SPOMeta.mk," Meta.mk, n.d., http://meta.mk/en/what-the-parties-agreed-to-new-editor-at-mtv-ad-hoc-body-for-the-media-and-support-for-the-spo/.

13. MIGRATION AND ASYLUM

MACEDONIA AT THE FOREFRONT

The migration issue was largely used by the Government during the internal political crisis to demonstrate its ability to address the crisis. The fact is that, despite the rotations of Ministers from the ruling party and the Opposition, the policy towards the migration crisis was not subject to change and thus **marked a trend towards stagnation**.

By the end of 2015, Macedonia had **built a fence on its border with Greece** and reinforced it by February 2016. According to Frontex, the Republic of Macedonia, "**given its geographical position, was a key player in all the coordinated measures agreed and implemented at regional level for the reduction of the unprecedented migratory flow**".[85] Macedonia took on a major role for closure of the Balkans route, especially through the regional arrangement made by Austria, Slovenia, Croatia, Serbia and the Republic of Macedonia to jointly profile and register refugees and asylum seekers at the border between the Republic of Macedonia and Greece and take on a number of additional actions.[86] These arrangement were subject to criticism by the United Nations High Commissioner for Refugees (UNHCR),[87] as well as national and international organizations working along the Western Balkan migration route.[88] Following these measures and the EU-Turkey statement on 18 March 2016 on closing the Balkans route, the **flow of refugees and asylum seekers significantly dropped**.[89]

14. POLICE REFORM

WHO CONTROLS THOSE WHO CONTROL?

In a nutshell, the **police reform has also experienced backsliding**, given the long lasting struggle for party control over the Ministry of Interior resulted in further politicization, instead of actual reforms, despite the fact that a Strategy for Police Development has been drafted.

A **Strategy for Police Development 2016-2020**[90] was drafted and presented with EU support. However, the status regarding the adoption of the strategy is not known. Unlike previous strategies, this one has **attracted no public interest**. While mentioning the findings of the EC Country Reports, the document **does not address the main issues of politicization of the police**. Being an extremely technical document, it **avoids addressing the key challenges**: politicization, internal and external control over the police, protecting the rights of citizens and their privacy and personal data, etc.

In reality, the **political struggle for control over the MOI** was ongoing throughout the year. As one of the key Ministries that were part of the Przhino Agreement, to which a Minister from the Opposition was appointed, disputes over appointments of staff were constant. Following the failure of the initial Przhino Agreement, the ruling party amended the Law on Internal Affairs, removing the competences of the Minister.[91] Following negotiations for the Przhino 2 Agreement, the implementation of this law has been delayed until 1 January 2017. In addition, the Przhino 2 Agreement explicitly admits politicization; it establishes the right of the Minister of the Interior to make "up to 10% of the number of horizontal transfers based on the average of such transfers in the years 2013 and 2014".

In the summer of 2016, 600 new police officers were employed, which was assessed by civil society as further politicization of the police.

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15. REGIONAL ISSUES AND INTERNATIONAL OBLIGATIONS

STATUS QUO

Overall, there has been **stagnation** in respect of regional issues, due to their marginalization and their framing for the purposes of domestic politics.

Owning to the strong focus on the political crisis, regional issues and international obligations, except for the migration crisis, have been **pushed to the margins of political discourse**, with no major changes made since the 2015 EC Country Report. For example, **the name issue with Greece** did not receive as much attention as in previous years. In addition, regional issues and international obligations have **mostly been linked to the elections and primarily used to frame the discourse for domestic political purposes**.

POLICY RECOMMENDATIONS

None of the recommendations is addressed to the Government currently in power, as a precondition for re-establishing the rule of law in the country is that Government representatives take on political and other responsibilities with regard to the illegal interception of communications, as indicated by the wiretapping scandal in 2015.

To the political parties

- To ensure that free and fair elections take place
- Not to list, as candidates for elections, persons against whom an investigation has been launched by the SPP
- To take on a public commitment before the elections to re-establishing the rule of law and ensuring the sep aration of state and party, especially through:
    - Ensuring independence of independent and supervisory bodies, with immediate focus on the
    - Constitutional Court, Judicial Council and Council of Public Prosecutors
    - Providing support to the SPP
    - Ensuring the professionalism of the state security services
    - No political interference in the recruitment and career advancement of public administrators
    - Ensuring freedom of expression, with banning government advertisements in the private media and professionalism of the Audiovisual Agency
    - Constructive and sustainable cooperation with the civil sector

To EU institutions

- To focus again on the findings and recommendations of the Priebe Report and, consequently, the implementation of the URPs in the country
- To take into account the fact that EC leverage is decreasing, while the EU should not further abandon the instruments of the EU accession process without developing relevant and effective new instruments for promoting the rule of law
- Not to further compromise basic democratic values and trade democracy for security
- To avoid technicization in their reporting and recommendations and focus on assessing the actual, substantive progress in the different areas

To civil society

- To continue and further strengthen the watchdog role in order to put more pressure on the institutions
- CSOs should continue to work together, articulate the priority issues and jointly advocate before political agents for the essentials and priority actions leading to the re-established rule of law in the country, before and immediately after the elections
- CSOs should continue to develop their actions of monitoring, cooperation and advocacy targeted at the independent, supervisory and regulatory bodies in order to motivate the latter to be more transparent and professional

To the independent supervisory and regulatory bodies

To the SEC:

- To be fully prepared for the forthcoming elections and play an active role; ensure objectivity in the work of the SEC and respond promptly to complaints; regularly and comprehensively inform the public on the preparations for the elections and publish the results of the election in a timely manner; ensure transparency through open sessions
- To present a detailed report to the public on the implementation of the amended Electoral Law, especially providing answers to the issue concerning the 'clean-up' of voter lists, presenting lessons learned and options, and open up a public debate

To the Judicial Council and Council of Public Prosecutors:

- To regain citizens' trust by bringing back their integrity and not relenting under governmental pressure
- To include the media and the CSOs in their work, so as to increase their transparency
- To be transparent with regard to the elections and the advancement of judges and public prosecutors

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Institute Alternative, Bul. Džordža Vašingtona 57, I/20
Tel/fax: + 382 (0) 20 268 686
E-mail: info@institut-alternativa.org
Web site: www.institut-alternativa.org

Editor:

Stevo Muk

Authors:

Aleksandra Vavić, The fight against organized crime; Police reform – many documents, implementation delayed; Fight against terrorism

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Stevo Muk, Public Administration Reform in stagnation

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Vladimir Gjorgjevski

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INTRODUCTION

This national study, which monitors and evaluates the rule of law in Montenegro, reflects on developments in the areas covered by chapters 23 and 24 of the acquis (political criteria), for the period following the European Commission's 2015 Country Report. The purpose of this policy study is to assess the trends in Montenegro in the areas under analysis.

It is not our purpose to replicate or interpret the findings of the EC report. Rather, our intention is to provide a deeper and more focused view, and at the same time a comprehensive and objective insiders' perspective, on developments related to essential rule of law issues. Consequently, we aim to provide a qualitative assessment of each of the issues under analysis which goes beyond just addressing technicalities.

Our study is based on a jointly developed methodology. The key areas to be analysed were identified: elections, parliament, government, civil society, civilian oversight of the security forces, public administration reform, the judiciary, anti-corruption, organized crime, the fight against terrorism, fundamental rights and the protection of minorities, asylum and migration, police reform, and regional issues and international obligations. To ensure comparability, most of our sub-areas correspond to the EC's structure for monitoring and reporting. Process tracing[1] was applied to determine the trends and examine whether backsliding or progress has occurred for each of the sub-criteria. This said, we do not seek to use process tracing to rigorously determine causality, but rather to identify clues which can help to affirm or weaken our hypotheses.

The study has been produced within the Monitoring and Evaluation of the Rule of Law in the Western Balkans project (MERLIN WB), conducted by the European Policy Institute in Skopje in partnership with Institute Alternative in Montenegro and the Belgrade Centre for Security Policy in Serbia and funded by the European Fund for the Balkans. Based on the country studies, a policy paper covering the three countries (Macedonia, Montenegro and Serbia) will be produced.

[1] David Collier, "Understanding Process Tracing," PS: Political Science & Politics 44, no. 4 (October 2011): 82330, doi:10.1017/S1049096511001429.

Executive Summary

Despite the establishment of new anti-corruption institutions and intensive legislative activity, Montenegro has not significantly advanced towards meeting the EU's political criteria and rule of law standards.

Reform of the judiciary is ongoing, but problems identified at the outset, including accountability, independence and impartiality, remain a challenge. The key issues, such as the recruitment and promotion of prosecutors and judges, the transparency of how their performance is evaluated, ethical and disciplinary accountability, criminal liability and the rationalization of the judiciary network, have still not been adequately addressed.

The establishment of the Agency for the Prevention of Corruption was marked by many controversies and a lack of transparency. All penalties imposed for violation of the Law on Prevention of Corruption are below the legal minimum. Donations by individuals to political entities are not sufficiently transparent. The Agency failed to grant whistleblower status to an individual who had exposed misuse of public funds for party purposes. The work of the Special Prosecutor's Office (SPO) represents a rare example of progress in the area of the fight against corruption, although there are many obstructions impeding its work.

The fight against organized crime is still marked by difficulties arising from the shift from judicial-led to prosecutorial-led investigation and the process of adjusting police officers and prosecutors to their new roles. A Special Police Department was formed with a half-year delay, and although the Police Development Strategy 2016-2020 was enacted, the implementation of its measures has been delayed.

Several event in Montenegrin political dynamics marked 2016. The Social Democrat Party (SDP) left the ruling coalition, subsequently joining the so-called government of electoral trust with the other two opposition parties. The Government of Electoral Trust had some positive effect on the transparency of the government's work, but it did not manage to prevent electoral misuses, while the competent institutions lacked proactivity in ensuring free and fair elections.

Misuse of public funds, cases of vote-buying and many violations of the law were reported during the electoral campaign and on election day itself. The SPO raised 157 cases for criminal acts against electoral law, based on charges filed by NGOs, political parties and citizens and on media reports. The opposition refused to recognize the election results due to allegations and official statements made on election day by the police and prosecutors, claiming that terrorists from Serbia, acting on behalf of certain parties, were planning to capture the prime minister.

The not particularly ambitious Public Administration Reform Strategy and its accompanying Action Plan were adopted after more than half a year of delay. Merit-based recruitment is yet to be achieved, and the implementation of several laws has been repeatedly postponed. The start of EU membership talks has not sufficiently curbed politicization in Montenegro.

The accountability of local government is particularly worrisome, with information about finance at the local level considered confidential by the Ministry of Finance. The lack of budget transparency is also a problem at the national level.

Cooperation between civil society and the government has slid backwards. The Law on NGOs has not been amended, while the work of the Council for the Development of NGOs has been hampered by a boycott by NGO representatives. EU membership talks continue to involve the government and the European Commission almost exclusively. Other relevant actors, including CSOs, are sidelined and their role is further downgraded by a lack of public access to expert opinions issued in the process of approximation of Montenegrin legislation with EU standards.

Government efforts to achieve social inclusion do not provide sufficient control of funds for the employment of marginalized groups. There is no systematic approach covering all types of discrimination. Although new legal provisions could improve the organization of public assemblies in Montenegro, they fail to address two enduring issues:

administrative procedures and good policing. Personal data remains insufficiently protected and freedom of information is still difficult to achieve. There has not been sufficient progress either in dealing with incidents of attacks on journalists, as threats to journalists are not considered criminal acts.

1. ELECTIONS: Trust in the electoral process on a low scale, competent institutions lacking proactivity

Two major issues have marked Montenegrin elections in recent years: mistrust in the electoral process and the failure of the competent institutions to perform in a proactive and accountable manner. Despite official efforts to foster public trust in the electoral process, the parliamentary elections on16th October this year showed that this attempt has failed from both the bottom-up and top-down perspectives. The competent institutions showed a lack of proactivity in terms of ensuring free and fair elections.

In January 2016, protests by an opposition party,[2] which also boycotted parliament, led to a no-confidence motion being debated in parliament.[3] This was followed by the adoption of a Law on Agreement on Creating Conditions for Free and Fair Elections, according to which a Government of Electoral Trust was established, in which two deputy prime minister positions, five ministerial seats and 142 control seats in state institutions and state-owned enterprises were allocated to members of the opposition.[4] However, this instrument failed, as the law itself limited their mandate, providing that ministers from opposition parties and controllers could only access documents and data for 2016. In addition to that, one opposition party, United Reform Action (URA), decided to leave the Government of Electoral Trust, claiming that the ruling Democratic Party of Socialists (DPS) had broken the agreement to create the conditions for free and fair elections.

Another cause for concern is the register of voters' list. Even though a centralized system of identifying voters electronically was implemented for the first time during the local elections in Tivat in April 2016, under the competence of the Ministry of Interior (MoI), the register remained a subject of dispute among the competent institutions.. The government eventually tasked the MoI's secretary with signing it.[5] The number of eligible voters was regularly published,[6] but its accuracy was questioned by CSOs and the media, with various allegations being made about the number of so-called "phantom voters".[7] The Interior Minister refused to sign the register, as he considered it to be inaccurate due to the alleged obstructions of his work.[8]

Finally, the issue of vote-buying remains prominent in the Montenegrin context, as pre-election employment cases were recorded as well as a number of complaints sent by citizens who were subject to bribe activities to NGOs that dealt with this election-specific issue. The infamous audio-recording affair, in which conversations disclosing the intention of the ruling party to buy votes were leaked, has still not made it to the courts.

The State Electoral Commission (SEC) failed to deliver, as it did not take significant steps to ensure the legality of the elections. There was a clear lack of proactivity in determining the legality of the register of voters, as well as a lack of transparency when informing citizens about its activities. The MoI brought to light the issue of the authenticity of biometric IDs,[9] meaning that the SEC was forced to issue an opinion stating that the fact that IDs were not biometric was not a cause for concern given that the electoral laws are complementary and IDs are machine-readable. The SEC finally confirmed the election results without taking a proactive stance regarding revision of the register of voters.

[2] Calls for the resignation of the Prime Minister and the formation of an interim government marked protests organized by the Democratic Front (DF) during September, October and November 2015.

[3] 42/81 voted confidence in the government, while 20 members of the opposition were not present due to the boycott. On the day of the vote itself, Positive Montenegro, and opposition party decided to vote confidence in the government, on which the entire process depended.

[4] The opposition to the Government of Electoral Trust consisted of the URA, Demos and the SDP

[5] The MoI, The State Electoral Commission (SEC) and the Data Protection Agency

[6] Once the election had been called, voters were able to find out where they were supposed to vote online at the website www.biraci.me or by calling an election-specific call centre which was functional until election day.

[7] The Interior Minister in the Government of Electoral Trust stated that there were more than 100 000 phantom voters, while the Centre for Investigative Journalism stated that comparing official statistical data from the 2011 census with official MoI data from the voters register shows that there are some 35 000 phantom voters. See more at: http://www.cin-cg.me/biracki-spisak-1-i-dalje-pogodan-za-zloupotrebe-desetine-hiljada-fantom-biraca/

[8] A Coordination Body for Monitoring the Implementation of Electoral Legislation was constituted on an ad-hoc basis by the MoI in order to contribute to the establishment of a proper register of voters.

[9] The tender documentation on procurement of the documents has been destroyed due to a 2015 decision by the former Interior Minister in accordance with the Law on Archives and the former Law on Public Procurement.

The Agency for the Prevention of Corruption, established in January 2016, was expected to play a significant role as a watchdog regarding the equitable reporting of financing by all institutions.[10] However, the agency's work on the ground did not deliver the expected concrete results. The agency's work is limited to informing interested parties about actions undertaken without providing additional, more in-depth data about these actions. Even though this institution does not have a mandate to check the sources for data appearing on institutions' websites, given the significance this body should have in terms of the fight against corruption, it should show more proactivity in terms of initiating changes to the legal framework in this context. Nonetheless, the agency functions merely as a data collecting body, with no hints of proactivity.

The office of the Special State Prosecutor (SSP) was given the competence to investigate criminal violations of voting rights, according to the Law on Amendments to the Law on the Special State Prosecutor's Office from 19th August 2016. Thus, the SSP raised a total of 157 cases based on the criminal charges received.[11] Even though the decision to provide the SSP with competences in the context of elections is seen as a positive change in comparison to the parliamentary elections of 2012, the extension of competences was not followed by capacity strengthening.

In addition, the SSP issued a statement on election day that 20 individuals had been deprived of liberty on suspicion of creating a criminal organization and planning a terrorist attack. The investigation is ongoing and is cloaked with secrecy, with three people placed in custody and six released after questioning. The SSP claims that the scope of the alleged attack would have been horrific, and the rhetoric of both the ruling party and the opposition is full blame for the other side for a staging the event, given that the information about it was released on the very day of the election.

2.PARLIAMENT:

Control mechanisms remain weak

Control mechanisms are not effectively used and need to be further strengthened. The Parliament's conclusions are not legally binding and the authorities are not obliged to report automatically on their implementation while the parliamentary capacities to follow up on the conclusions and recommendations adopted in oversight hearings remain limited. In 2016, a number of procedural issues have arisen during the implementation of parliamentary questions which hindered their implementation. Even though the Government only formally carries out regulatory impact assessments, the Parliament does not verify the quality of these reports and does not conduct ex-ante evaluations of the laws proposed by MPs.

The long awaited Law on Parliament, intended to solve certain procedural issues which hamper parliament's oversight function, has still not been proposed or adopted, although several strategic documents deem this an obligation.[12]

Even though parliamentary questions are the control mechanism most widely used by MPs, they still have little effect, while a number of procedural issues have arisen which have hindered the implementation of this measure. On one occasion during the reporting period, the speaker refused to take questions from opposition MPs, thereby effectively filtering what the MPs can or cannot ask during the Prime Minister's hour. Questions addressed to PM Djukanovic by MPs Sabovic and Vucinic were deemed not in line with parliamentary Rules of Procedure and thus were rejected by Deputy Speaker Simovic.

During the first half of 2016, MPs were deprived of one session of parliamentary questions scheduled for the end of July.[13] This resulted in less parliamentary questions being posed than in either 2015 or the election year of 2012 (Figure 1).

Figure 1: Parliamentary questions 2012-2015 and January-October 2016	2012	2013	2014	2015	2016[14]
Questions to the Prime Minister	21	49	50	56	21
Questions to other members of the government	208	196	231	272	75

[10] It has adopted a Plan for Control and Supervision of the Implementation of the Law on Financing of Political Subjects and Electoral Campaigns and acted as the monitoring body for the financial aspect of elections, observing the legality of campaign financing and equitable spending in public institutions as well as employment procedures.
[11] For more information see: http://tuzilastvocg.me/index.php/en/news .
[12] The 2013-2014 Action Plan for implementation of the Strategy for the Fight against Corruption and Organized Crime and the 2014 Action Plan for Strengthening the Legislative and Control Function of Parliament.
[13] According to the Rules on Parliamentary Procedure, the Prime Minister's Hour is held once a month and Parliamentary Questions at least every two months.
[14] January-October 2016

In addition to these issues, several other problems beset the implementation of this control mechanism. Responses from the executive usually provided only a general overview of the state of affairs in a given area instead of answers to the specific questions asked. Additionally, ministries do not submit answers to MPs in advance of sessions, and sometimes fail to provide written answers at all.

Although there were numerous control and consultative hearings, follow-up on the conclusions adopted remains at an unsatisfactory level. Up to October 2016, the Parliament of Montenegro's working bodies held 10 control and 33 consultative hearings, with parliament adopting 23 conclusions overall. However, the conclusions are often not specific enough and do not constitute precise obligations for executive bodies. Additionally, the authorities are not obliged to report automatically on parliament's conclusions, and parliament's capacity to follow up on the conclusions and recommendations adopted at oversight hearings remains limited. So far, only the Anti-corruption Committee has established a system for monitoring the implementation of its conclusions, and its results highlight the alarming disregard of conclusions by the state authorities.

On the other hand, the opposition has been passive in using its procedural right to initiate control hearings. In the reporting period, there was only one attempt to exercise this right, which was ignored. One third of committee members can initiate a control hearing with one agenda point twice a year, in addition to those initiated regularly by the majority of committee members in attendance. Until October 2016, this option was exercised only once, by MPs on the Security and Defence Committee, but the hearing never took place. PM Djukanovic, the coordinator of the Bureau for Operational Coordination of the Security Services Dusko Markovic, Chief State Prosecutor Ivica Stankovic and Chief Special Prosecutor Milivoje Katnic did not attend the hearing on statements from the Council for National Security's report.

Parliament rejected the opposition's initiative to establish a committee to monitor the implementation of the state's largest investment project – the Bar-Boljari Highway. The competent minister argued that parliament lacked the competencies to do this.[15] On the other hand, a vote of confidence in the Government of Montenegro took place in January 2016, but the process was not initiated by MPs, but by the PM himself.

The European Integration Committee is mandated to ensure horizontal monitoring of the accession process and provide opinions on prepared negotiation positions. In June 2016, this committee deliberated two key documents in the area of the rule of law: reports on implementation of the action plans for Chapters 23 and 24 in 2015. The session lasted slightly over 60 minutes, with the reports merely being presented, and no substantial discussion on progress made within these key chapters took place.

In 2016, **the Security and Defence Committee** violated the Law on Parliamentary Oversight by failing to adopt the Parliamentary Oversight Plan within the stipulated deadline.[16] The plan, adopted with six months of delay, was identical to the previous one, serving only as a general overview of annual activities. The committee has carried out only two supervision visits to institutions,[17] and has not performed supervision visits to the National Security Agency, a key security service institution, since 2010, nor has it controlled the implementation of secret surveillance measures. The committee has held only six sessions in 2016, while one more was scheduled for the end of July.[18] Given that the committee is the parliamentary body with the widest range of control mechanisms at its disposal, it has not performed its control actions in a way that would ensure effective control of the executive.

The Anti-Corruption Committee has been particularly passive this year, holding only five sessions. Only one of these dealt with any of 21 activities planned in the committee's working plan for 2016, deliberating special performance reports for January-June 2016 from the Chief State Prosecutor's Office and the Special State Prosecution. Other activities planned for this year have not been realized, including two control hearings, a performance analysis of

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[15] A committee for control of construction of the highway is not needed, Daily Vijesti, 25.07.2016, url: http://www.vijesti.me/vijesti/ne-treba-odbor-za-kontrolu-izgradnje-autoputa-897689

[16] Security and Defense Committee violates the Law for five months, available at: http://institut-alternativa.org/saopstenje-odbor-za-bezbjednost-i-odbranu-pet-mjeseci-krsi-zakon/?lang=en

[17] Supervision visits to the Border Police Sector and the Ministry of Interior's Directorate for Emergency Situations were carried out.

[18] Control hearing of the President of the Council for National Security, PM Milo Djukanovic, the coordinator of the Bureau for operational coordination Security Services Dusko Markovic, Chief State Prosecutor Ivica Stankovic and Chief Special Prosecutor Milivoje Katnic regarding statements from the Council for National Security's report. The hearing has been postponed, and there is still no word about a new date. The hearing was scheduled on the initiative of opposition members, who according to the law are able to do so if one third of committee members agree, unlike the usual procedure, which requires a majority of members' votes..

financial investigations intended to detect acts of corruption, deliberation of the State Audit Institution's reports on areas particularly vulnerable to corruption, the government's quarterly reports on combating corruption and organized crime and those parts of the EC's report on Montenegro which deal with Chapters 23 and 24, among others.[19]

There has been some improvement when it comes to parliamentary inquiries. **The Parliamentary Inquiry Committee on Podgorica Tobacco Plant**[20] was established in July 2015, with a 90-day mandate to perform tasks set by the decision which established it. However, the committee missed all its deadlines and adopted its final report only in July 2016.[21] For the first time in Montenegrin parliamentary inquiries, the committee did not adopt a technical report, and two months later the report is still not on the agenda for the plenary session. The report states that the privatization of Podgorica Tobacco Plant was performed illegally, in violation of the public interest and the interest of its employees and minority shareholders.[22]

Most legislative activity in 2016 happened between mid-May and August following the return of the opposition to parliament, with parliament adopting 85 laws in under two and a half months. Although only one law was adopted using urgent procedure in the reporting period, the number of laws adopted in this manner during the 25th convocation of parliament was high, as shown in Figure 2. There has been a steady growth in legislative initiative from MPs, possibly enabled by the political turmoil in the ruling coalition (Figure 3).

Figure 2: Number of laws adopted in the period January-October 2016 compared to previous years	2012	2013	2014	2015	2016[23]
Total number of laws adopted	79	113	95	125	97
Number of laws adopted under urgent procedure	22	17	23	28	1
Number of laws adopted under urgent procedure (Percentage)	27.8%	15%	24.2%	24.3%	1.03%

Figure 3: Number of proposed by the Government vs. those proposed by MPs in the period January-October 2016 compared to previous years	2012	2013	2014	2015	2016[24]
Total number of laws adopted	79	113	95	125	97
Number of laws proposed by the Government	73	97	77	101	89
Number of laws proposed by the Mps	6	16	18	24	8
Number of laws proposed by the MPs (Percentage)	7.6%	14.6%	18.9%	19.2%	8.2%

One aspect of legislative procedure – the quality of ex-ante assessment of fiscal impact – is best illustrated by two laws adopted in the reporting period: the Law on Salaries of Public Sector Employees and the Law on Amendments to the Law on Social and Child Protection, the implementation of which caused unexpected expenses and thus required amendments to the 2016 Budget Law. The initial assessments of fiscal impact for these laws were way off the mark. Parliament does not have a unit dedicated to verifying the quality of the government's regulatory impact assessment (RIA) reports, or to prepare RIA for laws initiated by MPs. At the same time, the 2016-2020 Public Administration Reform Strategy acknowledges that RIA is being conducted only formally, and envisages measures to tackle these deficiencies.

The code of ethics for MPs has proved ineffective. Clear violations of the code were committed during the reporting period, but were not sanctioned. A verbal assault on PM Djukanovic by Democratic Front MPs was followed

[19] The Committee should have consulted reports and carried out analysis, and subsequently proposed specific measures, proposals and recommendations to the competent authorities. Working Plan of the Anti-Corruption Committee for 2016, available at: http://www.skupstina.me/index.php/me/odbor-za-antikorupciju/sjednice

[20] Inquiry committee for collecting information and facts on the events relating to the actions of the competent state authorities in the protection of state property and the public interest during the sale of the assets of JSC Tobacco Plant Podgorica in bankruptcy.

[21] Proposal for the report of the inquiry committee for collecting information and facts on the events relating to the actions of the competent state authorities in the protection of state property and the public interest during the sale of the assets of JSC Tobacco Plant Podgorica in bankruptcy, submitted on 16 December 2015 by the chairperson of the committee Mr Aleksandar Damjanović, available at: http://www.skupstina.me/index.php/en/anketni-odbor-za-prikupljanje-informacija-i-cinjenica-o-postupanju-nadleznih-drzavnih-organa-u-zastiti-imovine-i-javnog-interesa-prilikom-prodaje-imovine-duvanskog-kombinata-podgorica-ad-u-stecaju/aktuelnosti/item/5481-twelfth-meeting-of-the-inquiry-committee-tobacco-plant-podgorica-ends

[22] The report contains four conclusions – the purchase contract should be annulled, parliament should take measures within its competence to determine the accountability of public officials who took part in the privatization, parliament should adopt a new lex specialis to provide overall protection of the tobacco industry and deal with all issues related to privatization of the tobacco industry and all documentation related to this issue collected by the Inquiry Committee should be submitted to the Chief State Prosecutor's Office.

[23] January - October 2016

[24] January - October 2016

by several other incidents, resulting in the deterioration of the quality of political dialogue and scenes uncharacteristic of the Montenegrin Parliament. Consequently, charges were filed against seven MPs for violation of the MPs' code of ethics, but they were not deliberated due to a lack of quorum in the competent committee. The lack of experience in implementation of the code was visible when the vice-chair of the Committee for Human Rights rejected as unfounded charges filed against members of her coalition,[25] despite the fact that such a decision can be delivered only once the committee has deliberated the matter.

3.GOVERNANCE:

Not so accountable

The last year has been marked by break-up and realignments within the ruling coalition, which although it has had only minor temporary negative effects on political stability, has further politicized administration. Realignments within the ruling coalition were followed by the formation of the Government of Electoral Trust, which, although it failed to achieve its key role, had positive side-effects for the transparency of institutions. Lack of budget transparency, at both the national and local levels, continues to be particularly worrisome. Information on the use of state budgetary reserves and on the state of local finances in Montenegro's municipalities is completely lacking. Preparation of the Action Plan for Open Government Partnership (OGP) is still stalled. In the last 12 months, Montenegro has opened additional 4 chapters in membership talks with the EU, but this advancement is not adequately scrutinized, since the reports on meeting EU standards are largely technical and not result-oriented.

The long-term relationship between the DPS and the SDP officially ended with the SDP voting no confidence in the government in January 2016. However, the DPS remained in power with the support of the Social Democrats (SD), a party which broke away from the SDP, being officially established in early 2016. Hence, although the split temporarily hampered the functioning of government, the new ally stepping in has mitigated the effect on the government's stability.

The break-up and subsequent re-alignment had negative side-effects for the professionalism of public administration, given the significant turn-over of senior managers. In other words, the senior SDP cadre in ministries and other authorities was largely replaced by officials from the newly formed break-away SD party and the ruling DPS.[26]

On the same day he survived the confidence vote, on January 28, 2016, the prime minister asked the opposition to join the government. This was enabled by a special law, whose adoption and key provisions are explained in the assessment of the elections (See: Page 7). From the aspect of governance, the special law and the opposition joining the government was a trade-off between two, somewhat competing principles: the need for public scrutiny over the functioning of government before elections and the need to reduce political influence over public bodies.

The *lex specialis* has had a positive effect on the transparency of the government and, at least temporarily, has increased public scrutiny over the government. Despite the lack of access to previous budget years, some opposition-led ministries have partially addressed an initiative for greater transparency from a group of NGOs, and have started publishing important information, allowing for greater traceability of the use of public funds.[27] For example, the Ministry of Labour and Social Care has systematized the presentation of information, publishing it proactively on its website in a special section. It has also started publishing decisions on the granting of social allowances and widened the scope of information presented on analytical cards to include the amounts allocated for social allowances per municipality. The Ministry has also proactively published annexes to public procurement contracts concluded in 2016, the 2016 public procurement plan, per diems allocated in the Ministry during 2016 and variable parts of salaries paid to its employees in 2016, as well as publishing an estimated value of the overall property of the Ministry.[28] These practices are novel to governance in Montenegro's administration and should be taken up during the new term of the government.

[25] Djuraskovic rejects Pajovic's charges against Democratic Front MPs, Daily Vijesti, 18.07.2016, available at: http://www.vijesti.me/vijesti/duraskovic-odbacila-prijavu-pajovica-protiv-poslanika-demokratskog-fronta-896774

[26] In just one Government session, at least eight appointments were politically motivated, aimed at replacing the cadre of the now old coalition party. The documents from the government sessions are available at: http://www.gov.me/sjednice_vlade/154

[27] Institute Alternative, along with the Centre for Civic Education and NGO MANS, urged all institutions subject to the Agreement on Free and Fair Elections to ensure full transparency in their work and provide continuous and timely disclosure of all relevant information in their possession on their official websites. The initiative was partially followed up.

[28] Information obtained from the Ministry upon the request of Institute Alternative.

The transparency of the state budget, with regards to both planning and execution, is hampered by the failure to meet some of the following key preconditions. First, there is no in-year reporting to parliament about how the budget is executed. Second, parliament has little say over how the capital budget is planned. Specific capital projects are not listed within the Law on the Budget, but rather only in the rationale accompanying the proposal for the law.

Open data practices are also still to be taken up in the presentation of public finances in Montenegro. Although IA has urged the Ministry of Finance to publish original budgetary documents in a format which would allow and facilitate data search and processing, the ministry has not responded positively to the initiative.[29]

In an election year, public access to data on the use of budgetary reserves remained restricted. In March 2016, the Secretariat-General of the Government declared all information on the work of the commission responsible for allocating funds from the budgetary reserve confidential. IA has made an appeal to the Agency for Personal Data Protection and Free Access to Information to curb this practice, but the agency is yet to make a decision on the issue.[30] Given that 62 million euros was allocated through budgetary reserves between 2012 and 2016, disclosure of the recipients and the criteria according to which this amount is allocated is needed.

Local government finances represent one of the main black holes for transparency in Montenegro. The Ministry of Finance declared information on the finances of Montenegrin municipalities to be confidential, for which reason IA filed a suit at the Administrative Court. The suit was upheld in September 2016, but the information is still out of public reach.

In 2015, the Ministry of Finance signed contracts with 16 municipalities (out of 23 in total) to reprogram debts incurred due to unpaid taxes and contributions. The contracts are imprecise and ambiguous regarding the obligations municipalities need to meet. The key reference point for downsizing local administrations is the 2013-2018 Plan for Internal Reorganization of the Public Sector, which envisaged that all municipalities would analyse the optimal number of employees. However, the plan's implementation has so far largely failed to deliver the expected key results (See: Chapter on public administration reform), especially regarding the downsizing of the number of employees at the local level. According to information adopted by the government in July 2016, only a minority of municipalities completely fulfil their contractual obligations. In the first five months of 2016, municipalities announced 155 more job positions than they were allowed by the Ministry of Finance.[31] This ministry should give consent to each vacancy announcement by municipalities, subject to the debt restructuring contracts.

The OGP is a multilateral initiative aimed at promoting and improving government transparency and innovations.[32] The new action plan was prepared by the operational team in March 2016, but since then the team's functioning has been blocked and adoption of the plan is still pending.

Montenegro has lacked a minister of foreign affairs and European integration since April 2016 until late November 2016. During that period the coordination of this important institution has been taken over by prime minister Milo Djukanovic. With four additional chapters opened since the European Commission's most recent country report, 24 chapters of the EU's acquis are now open for negotiations, while two have been provisionally closed. One of the most challenging chapters, chapter 27 on the environment, is still in the initial screening phase, where the level of alignment with EU standards is determined.

January 2016 saw the publication of the fourth quarterly report on implementation of the Programme for EU Accession, a rolling planning document. Since 2013, this document has substituted for the lack of a strategic approach to the commitments stemming from the country's EU agenda. However, the programme and reports on its implementation remain overly technical, being mostly about ticking boxes and adopting specific laws without critical assessment of the track record. The situation is similar when it comes to commitments and reports within the most

[29] See more in press release «Open Up Budget Data», available at: http://institut-alternativa.org/saopstenje-otvoriti-budzetske-podatke-za-javnost/?lang=en
[30] See more in "Current budgetary reserve – 60 million out of sight", available at: http://institut-alternativa.org/tekuca-budzetska-rezerva-60-miliona-van-ociju-javnosti/?lang=en
[31] Information on implementation of obligations defined in Contracts on municipal debt reprogramming and regulating mutual relations of the Government and municipalities on the basis of credit loan with a state guarantee, available at: http://www.gov.me/sjednice_vlade/167
[32] See more at the official presentation of the initiative: http://www.opengovpartnership.org/

challenging chapters: 23 (Judiciary and Fundamental Rights) and 24 (Justice, Freedom and Security), whose implementation is largely focused on outputs rather than outcomes and lacks clear benchmarks for semi-annual reporting which would allow critical assessment of the reported progress. For the sake of illustration, establishment of the new Anti-Corruption Agency is presented as an achievement,[33] although on 1st January 2016, when it was supposed to be fully operational, the Agency employed less than half of its estimated number of employees, while numerous other preconditions were not met (See Chapter Fight against corruption: Politicized institutionalization, no transparency, no results).[34]

4.Government and Civil Society:

Inclusion of CSOs far from substantial

Membership talks continue to evolve almost exclusively between the government and the European Commission. Other relevant actors, including CSOs, are sidelined. Their role is further downgraded by the lack of public access to expert opinions issued in the process of approximation of Montenegrin legislation with EU standards. Civil society development and cooperation with the government has slid backwards in the period concerned. The Law on NGOs has not been amended, while the work of the Council for Development of NGOs has been hampered by the boycott by NGO representatives.

Montenegro is usually praised for including CSOs in working groups for negotiations with the EU. Nonetheless, despite this inclusion CSOs are not on an equal footing with government representatives. Institute Alternative in particular warned that reports by European Commission expert missions regarding Montenegro's EU approximation are kept secret by the government, depriving non-governmental actors of insight into important aspects of membership negotiations and the country's overall reform efforts. In addition, the Council for the Rule of Law, a body established to track progress towards meeting benchmarks for Chapters 23 and 24, works behind closed doors with no civil society representatives, which tends to overshadow the efforts of working groups.[35]

The procedures and criteria used by the independent Commission to allocate money to NGOs from the state budget were a key subject of the Draft Law on Non-Governmental Organizations. Nonetheless, since the public debate on the draft law in late 2015 and the rejection by the most relevant NGOs of the draft provisions, no further developments in regard to the law have been noted. Another area which remains under-regulated is the allocation of land and tax exemptions, which can be granted to CSOs with no clear criteria, as illustrated by an attempt by three NGOs: the Center for Democratic Transition (CDT), Civic Alliance and the Fund for Active Citizenship (FAKT), to build a civil society house in the capital, Podgorica.

Montenegro is doing little to increase the transparency of the financing of NGOs from local budgets either. The report by Centre for Development of NGOs suggested that more than a third of money distributed to NGOs from the budgets of Montenegrin municipalities was not distributed based on open competition.[36]

Analysis of the effects of implementation of the 2014-2016 Strategy for Development of NGOs also states that no significant breakthrough has been made in creating a favourable environment for the development of NGOs.[37] The reasons for this are the insufficient competences of the Office for Cooperation with NGOs, which operates within the Secretariat General of the Government, and the weak functioning of the Council for Development of NGOs, an advisory body established in 2014 with the aim of enhancing the state of play in the field.

Thus far, the functioning of the Council has been marked by a high polarization between government representatives, of which there are 12, and the 11 NGO representatives. The council thereby fails to achieve one of its key aims – to serve as a forum for discussion and cooperation between the two sectors. Since July 22, 2016, NGO representatives have boycotted the Council's work after government representatives ignored their opinions and failed to consult them about press releases regarding the body's work.

[33] Report on Implementation of Action Plan for Chapter 23, January-June 2016, available at: http://www.gov.me/sjednice_vlade/167 (No. 6)
[34] See more at: http://institut-alternativa.org/sretna-nova-agencija-uspostavljanje-crnogorske-agencije-za-sprjecavanje-korupcije/?lang=en
[35] See: Jovana Marović, Stevo Muk, Negotiations Between Montenegro And The EU: Data Access For The Privileged Only, Institute Alternative, September 2015, available at: http://media.institut-alternativa.org/2015/10/ia-negotiations-between-montenegro-and-the-eu.pdf
[36] See more in the report on the financing of NGOs from local budgets, prepared by the Centre for Development of NGOs, available at: http://www.crnvo.me/sites/crnvo/files/article_files/izvjestaj_o_finansiranju_nvo_iz_budzeta_lokalnih_samouprava.pdf
[37] Analysis of the effects of implementation of the Strategy for development of NGOs 2014-2016, Government of Montenegro, September 2016. Available at: http://www.gov.me/sjednice_vlade/173 (No. 3)

5. Public Administration Reform:
In stagnation

The Public Administration Reform Strategy and its accompanying action plan were adopted after more than half a year of delay. The strategy is not particularly ambitious, with merit-based recruitment yet to be achieved and the implementation of several laws being repeatedly postponed. Postponement of implementation of the Law on Administrative Procedure will significantly slow down the establishment of one-stop shops. The level of politicization in Montenegro is as high as in the period preceding the start of EU membership talks.

The Public Administration Reform (PAR) Strategy was adopted in July 2016, after more than half a year of delay.[38] The adopted document is not particularly ambitious, and it is uncertain whether it will be possible to objectively measure changes by using defined indicators and baseline measurements. The MoI's Department in charge of public administration still has four de facto employees, and the head of the department is a person strongly connected with the ruling party, being the deputy representative of the DPS in the SEC. A step backwards has been made in the latest version of the strategy, by removing the obligation for NGO representatives to be involved in the coordination body for monitoring implementation of the PAR Strategy and restricting NGOs to involvement "by invitation" only.

Lack of capacity in public administration is also visible through the latest postponement of implementation of the Law on Administrative Procedure until July 1, 2017 – one year after the initially planned deadline for starting its implementation.

Amendments to the Law on Local Self-Government have not yet been adopted. This has negative implications for the local civil service, since there are currently no precise regulations for recruitment and professional development of local administration employees.

The Law on Utility Services was adopted in late July, after spending almost three years in parliamentary procedure, but its implementation has been also postponed for 18 months. The centralization of inspection control within a single government unit – the Administration for Inspection Affairs – was highlighted as a key PAR Strategy objective for 2011-2016. In the meantime, the government withdrew from the centralization concept, separating several important areas of inspection control from the Administration for Inspection Affairs, the most recent example being the field of food safety, veterinary and phytosanitary affairs.

Two new laws were also adopted – The Law on Administrative Dispute and the Law on Administrative Inspection.

The report on implementation of the 2013-2018 Plan for Internal Reorganization of the Public Sector showed that between May 2013, when the plan was adopted, and January 2016, the number of employees in the public sector increased by 1,199 to the current total of 52,522 employees.[39] This is in contrast with the plan's key aim to cut the number of employees by 10 per cent by 2018.

The Law on Wages of Public Sector Employees, although adopted after two years of preparation and a series of consultations with trade union representatives, did not include a proper Regulatory Impact Assessment (RIA). Its overall financial effects exceeded those planned for, but also caused dissatisfaction in the health sector and the military, which the government subsequently corrected by amending collective agreements. Several independent regulatory agencies initiated procedures at the Constitutional Court in order to review the constitutionality of the Law on Wages of Public Sector Employees.

In February, the government adopted a Public Finance Management Reform Program, but the public is not familiar with its accompanying action plan, which is under preparation. There is also no additional information available about its implementation. Civil society is not included in oversight of the implementation of this program.

[38] The working group has been working on its preparation for a year and two rounds of public consultations and consultations with the European Commission and SIGMA were organized.
[39] Most new employees were employed in the area of education (765), traffic (488) and local self-government (there are now 11,646 employees in local self-government with 1,138 new employees for the reporting period).

Although the number of services on the eGovernment portal has increased from 80 to 165, they are mostly still just services which provide information or supply forms which need to be submitted at the front desk in person. It is not possible to carry out transactions like paying taxes or performing services. Postponement of implementation of the Law on Administrative Procedure will significantly slow down the establishment of one-stop shops.

Since January 2013, when the new Law on Civil Servants and State Employees began implementation, no substantial breakthrough has been achieved. Although the discretion of ministers in recruiting civil servants has been restricted to ranking the list of the top five candidates, low competitiveness and alleged irregularities in testing procedures hamper the achievement of merit-based recruitment. A working group tasked with amending this law was formed in August 2015, but after more than a year of functioning it is yet to prepare draft amendments and organize a public debate on them. So far, the working group has failed to address the key loopholes and the deficiencies of the existing legal framework.

Politicization in particular is still as present in Montenegro as it was in the period preceding the start of EU membership talks. Although there have been some changes to legislation, they have proved insubstantial, and the way is still being paved for capture of the state by political parties. Politicization is most acute among senior managerial staff, with at least 90 civil servants being actively politically exposed in advisory and managerial posts of the ruling parties since the 2012 general elections.[40]

Apart from the politicization which was further exposed after the break-up of the ruling coalition, there are also more recent examples of conflict of interest and flagrant breaches of political neutrality. Zoran Jelic, a DPS MP, was employed by the Employment Bureau, a state administration body, between July 2013 and May 2016, while simultaneously serving his term in parliament. His colleague, a fellow DPS MP, Radovan Obradovic, "kept" his civil servant post in the Municipality of Bijelo Polje during his parliamentary mandate. In 2015, while still an MP, he decided to quit his civil service post, getting a redundancy payment of 15,000 euros, although there were no legal grounds for him to receive this money, which, while being prescribed by the Labour Law, is not applicable to the civil service.

6. FUNCTIONING OF JUDICARY

The past few years have been marked by intense legislative activity in the area of the judiciary – the adoption of a large number of bylaws, the employment of judges, prosecutors, experts and technical staff, training sessions and workshops, the founding of new institutions and the introduction of new legal institutes. However, issues identified at the very beginning of the implementation of reform, such as accountability, independence and the impartiality of the judiciary, remain a challenge, especially issues regarding the appointment and promotion of judges and state prosecutors, transparency in relation to the appraisal system, criminal liability and disciplinary and ethical responsibility, as well as the rationalization of the judicial network.

Even though the Strategy for the Reform of the Judiciary 2014 – 2018 sets out the goals of the reform relatively clearly, while the action plan is being implemented in accordance with the planned dynamics, the necessary measures to achieve those goals are no longer compatible with the state in the judiciary. This requires the adoption of a new action plan (2017 – 2019) and a revision of the action plan for Chapter 23, which relates to the judiciary.

Thus, the Action Plan for the implementation of the Strategy for the Reform of the Judiciary foresaw the realization of only 13 new measures this year. During this period, the measures implemented were mostly measures from the previous period that are realised "continuously" such as training etc.

It is particularly troublesome that the 2016 measures mostly do not deal with the key issues defined by the strategy itself. The format of this Action Plan does not foresee reporting on the effects of the reforms, i.e. measurement of the influence of the implementation of measures as well as indicators that track the implementation of new laws in practice, which is the key issue.

[40] Institute Alternative, Professionalization of Senior Civil Service in Montenegro: Between State and Politics, Podgorica, December 2014

The Action Plan for Chapter 23, "Judiciary and Fundamental Rights", is essentially compatible with the reform directions defined by the Judiciary Reform Strategy in the part regarding judiciary reform. The Government of Montenegro adopted the modified version of this Action Plan in February 2015.[41] The changes enacted imply the postponement of certain deadlines for measures "where a delay has been noted or where not enough progress has been made in the previous year and a half." The structure of the Action Plan was not changed and the activities remained the same.[42]

The most recent report on the implementation of this AP states that by June 2016, of a total of 177 measures foreseen for reform of the judiciary, only 64 measures were tackled within the reporting period, of which only 5% or 8% were implemented. This implies that the definition of new measures is necessary in order to tackle the issues raised in practice.

However, the key data to demonstrate the implementation of the legal solutions related to reform of the judiciary, and which need to come under the heading "indicators of influence", are not accessible because the reports on the implementation of this Action Plan indicate that the final results can be found in annexes which in fact are not included in the report, nor are they publicly available. This renders the report itself meaningless when it comes to key measures, because it only alleges that the data is elsewhere. An example is how the effect of introducing bailiffs is reported: "the number of bailiff procedures is reported in the tables with track record in the final account of accomplished results."

One of the key goals of the reform is to strengthen the independence and professionalism of the judiciary by fully implementing new recruitment, professional appraisal and promotion systems. However, it seems that the entire legislative reform of February 2015 was in vain. The newest cases of the appointment of judges show that the discretionary appointment of judges will remain primary with regards to references and achieved results, which leaves room for the continuous politicization of judiciary.

Discretionary authority before criteria

In September this year, the administrative court dismissed a lawsuit by a candidate for the seat of judge of the Administrative Court against last year's decision by the Judicial Council on the election of two new judges of this court.

The candidate that filed the lawsuit claimed to have had better scores, better language knowledge and computer skills, and unlike the chosen candidate, experience of working in that court. She also claimed that the chosen candidate had not filed evidence regarding training in the areas being assessed.[43]

The most concerning fact is that the deliberation of the Administrative Court alleges that the best candidates are not necessarily chosen:

"The plaintiff does not imply in the indictment that that chosen candidates M.M. and A.P.V. do not fulfil the conditions for judges of the Administrative Court, but that they were put in a beneficial position, irregularly scored and that realistic scores would imply her advantage for the appointment" (...)

"The fact that the plaintiff scored more than the judge who has been promoted, (...), does not make her more eligible to be appointed, given that the Court Council has wide competence to estimate all the parameters for the appointment of judges and gives advantage to a certain candidate."[44]

This case of appointing judges was highly controversial, particularly since the official documentation of the Judicial Council on the scoring of candidates clearly shows that the chosen candidate was scored more highly, while the members of the Council altered decreased the score of the candidate whose appointment was being questioned.[45] The Administrative Court still acknowledged the documentation as valid.

[41] For more details on the modification of the AP see: http://www.eu.me/mn/press/saopstenja/pregovori-o-pristupanju/item/672-usvojeni-adaptirani-akcioni-planovi-za-poglavlja-23-i-24

[43] "The court decision confirmed that artistic perception can have an influence when it comes to the choice of judges": http://www.prelistaj.me/2016/09/27/presudom-potvrdeno-da-umjetnicki-dojam-moze-odlucivati-kod-izbora-sudija-vesna-medenica-ana-dukanovic-10/

[44] Ibid: http://www.prelistaj.me/2016/09/27/presudom-potvrdeno-da-umjetnicki-dojam-moze-odlucivati-kod-izbora-sudija-vesna-medenica-ana-dukanovic-10/

[45] "Scores of Marija Hajduković": http://www.prelistaj.me/wp-content/uploads/2016/01/Ocjene_Marija_Hajdukovic.pdf

What is particularly worrying is the lack of publicly available data on all vacancies (public and internal) in courts and prosecution offices, such as the number of candidates who applied, ranking lists, decisions and rationale, especially if the candidate with the highest score was not appointed.

On the other hand, the **justifications of the grades of state prosecutors in the pilot prosecutor's office (Basic State Prosecution (BSP) Cetinje[46]) are not publicly available.** Even though Institute Alternative (IA) asked for anonymized scores in order to better understand the quality of the professional appraisal process, the attitude of the Prosecutorial Council is that the president and the prosecutors would not have been protected by anonymization.[47]

Therefore, according to the Council the "interest of privacy of state prosecutors" dominates and the scores constitute personal data, so access to the information was denied. Justifications of the grades of employees in other state bodies in Montenegro are accessible via freedom of information. IA filed a complaint with the Agency for Data Protection and Freedom of Information on September 2nd this year. However, the Agency has still not made a decision.

When it comes to **accountability**, the second priority particularly emphasized by the European Commission when it comes to reform of the judiciary in Montenegro,[48] the state of affairs is the same as it was before the legislative reform – generally, either there is no accountability or everyone is impeccable in their work.

Ever since the adoption of the Strategy for Reform of the Judiciary on 31st January 2016, the Commission for Monitoring the Code of Ethics of judges carried out 21 procedures in total, where **no violation of the Code of Ethics by judges was noted**. During 2016, the Commission made three decisions, noting that there was one case where a violation of the Code of Ethics occurred, while in other two there was no violation.[49]

By January 31 2016, the Commission for Monitoring of the Implementation of the Code of Ethics of prosecutors had overall considered one case involving a violation by a state prosecutor at a basic level.[50] In the first 6 months of 2016, the Commission issued two decisions, one in which a violation of the Code occurred while in the other it had not.[51]

The reasons behind a practice where it is a rarity to determine accountability can be seen in the deliberation: "the analysis concludes that the filed initiatives are focused on the dissatisfaction of parties with the evidence in the procedures or the decision in the litigations, and the reason behind it cannot be the basis for such Commission attitude".[52] This merely indicates that the management itself, meaning the presidents of courts and the heads of prosecutor's offices hesitate to use these official instruments for determining the responsibilities of judicial officials.

Regarding **disciplinary accountability**, the Judiciary Council appointed a Disciplinary Council on May 26 2015. On 14 May 2015 the Prosecutorial Council appointed the members of the Disciplinary Council and their deputies. From then until 31 January there were neither disciplinary procedures nor procedures for dismissal of judges. Prior to the establishment of the Disciplinary Council, there were three disciplinary measures in 2015 issuing "warnings" to judges who during 2014 failed unjustifiably to conduct a sufficient number of decisions in the legally required time period.[53]

In the same period, a proposal for determining the responsibility of prosecutors was rejected because it was filed for a procedure that was not defined as a disciplinary misdemeanour. In addition, in the first 6 months of 2016 there were no disciplinary sanctions directed against state prosecutors.

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[46] In accordance with the decision of the Judiciary Council from 26th February 2016, pilot scoring is conducted at the Basic Court in Nikšić.

[47] The response of the prosecutorial Council upon IA'S FoI request: https://dl.dropboxusercontent.com/u/49359529/SPI Tužilački savjet odgovor.pdf

[48] In the coming year, Montenegro should pay particular attention to strengthening the accountability of the judiciary by developing a track record of implementing codes of ethics and new disciplinary systems for judges and prosecutors.

[49] Commission decisions can found at: http://sudovi.me/podaci/sscg/dokumenta/3872.pdf http://sudovi.me/podaci/sscg/dokumenta/4407.pdf http://sudovi.me/podaci/sscg/dokumenta/4480.pdf

It is interesting that the solitary case regarding the ethical accountability of a judge was initiated by the president of the Supreme Court against a judge at the Basic Court in Bijelo Polje. According to the Commission, the judge violated the code because she did not exclude herself from participating in a case where the plaintiff was a former judge at the same court and allegedly her friend, who was making a claim for compensation for reduced salary from the State of Montenegro.

[50] Report on the Work of the Commission for Monitoring the Implementation of the Code of Ethics for 2015: http://tuzilastvocg.me/media/files/IZVJESTAJ%20KOMISIJE%20ispravljena%20verzija.pdf

[51] Sessions held on 9 and 10 June 2016, decision of the Commission. Available at: http://tuzilastvocg.me/media/files/05-1-3903-2-16%20Usvojen.pdf

[52] Report on the implementation of AP for Chapter 23.

[53] There is no information on disciplinary proceedings for 2016 on the webpage of the Judiciary Council.

Finally, there was no **criminal liability**. In the report period, the Special State Prosecution had only one case regarding criminal charges for criminal acts regarding Article 422 of the Criminal Code – illegal influence (on the state prosecutor), and the case was closed by dismissal of criminal charges.

Almost half of citizens do not trust the independence of the judiciary

According to a public opinion poll published in March 2016, 40.5% of citizens over 18 do not trust Montenegro's judicial system, 52.6% trust the system and 6.9% have no opinion on the issue.

Most respondents (57.4%) consider that judges do not make their decision impartially, 30.4% consider them to be impartial, and 12.2% have no opinion on the issue. When it comes to prosecutors, the situation is slightly different, as 46% respondents consider the State Prosecution independent when it comes to criminal charges, while 40% consider it not impartial and 14% have no opinion.[54]

Human resources management in the judiciary

Even though the rationalization of the judicial network has been an active project since 2013, the Strategy for Human Resources Management in the Judiciary adopted by the government on July 11 2016 states that the situation in 2016 is as follows: "Montenegro has the greatest ratio of judges to citizens, as well as an above average ratio of employees to judges in comparison to the 26 countries of the EU for which CEPEJ distributed data." This is not due to a higher number of cases than in other countries, which despite having more new cases per citizen, have fewer judges per citizen.[55]

On the other hand, the ratio of population to prosecutors places Montenegro at the low end of countries in Central and Eastern Europe. Montenegro currently has 14 prosecutors per 100,000 inhabitants,[56] compared to a regional range of 14.8 to 25.7 prosecutors per 100,000 people in Poland, Hungary, Slovakia, Bulgaria and Lithuania.[57] However, Montenegro's ratio is high compared to that found in Western Europe, where prosecutors are more likely to be supported by larger numbers of mid-level specialist staff.

The judiciary employs almost 1800 persons in 44 institutions,[58] without taking into account the recently re-established misdemeanour courts. However, there is a trend for constant new recruitment and numerous measures within the strategic framework are related to this kind of institution strengthening. Even though the judiciary now has the aid of notaries and bailiffs, this has not reduced the number of employees in the judiciary even though some competences have been transferred to them.

The as yet unadopted Action Plan for the implementation of the Strategy for Human Resources Management in the Judiciary should provide a solution to this issue.

[54] Public opinion poll conducted by NGOs CEMI and HRA with EU support: http://www.hraction.org/wp-content/uploads/Istrazivanje_CEMI_HRA_05052016.pdf
[55] "With 5.3 judges per citizen (at 100,000), Montenegro currently has approximately twice as many judges than the average in other European countries."
[56] 2015 Decision on the Number of Prosecutors.
[57] Judicial Systems of European Union Countries – Analysis of data by the European Commission for the Efficiency of Justice (CEPEJ) Council of Europe, June 2013, available at: http://www.canestrinilex.com/assets/Uploads/en/CEPEJ-report-2013.pdf
[58] Including courts, state prosecutions, Supreme Court, Supreme State Prosecution, Ministry of Justice and Centre for education of judicial function holders.

7. FIGHT AGAINST CORRUPTION:

Politicized institutionalization, no transparency, no results

The legal and institutional preconditions for the prevention of corruption are fulfilled and a strategic framework is in place. However, as yet there is no track record in preventing corruption. The public procurement system remains problematic and access to information remains difficult to achieve. The establishment of the Agency for Prevention of Corruption was marked by many controversies and a lack of transparency. The agency verified some 90% of the declared assets planned for verification and identified misdemeanours, but all the penalties imposed are below the legal minimum. Donations by individuals to political entities are not sufficiently transparent, which prevents public scrutiny. The agency did not grant whistleblower status to the person who exposed the misuse of public funds for party purposes.

NGO representatives, even those from the Working Group for Chapter 23, were excluded from the preparation of the Operational Document for Preventing Corruption in Particularly Vulnerable Areas.[59] The five most prominent NGOs[60] were consulted only after drafting of the document was completed and they later submitted comments during the public hearing, but the rationale for not accepting most of their comments was illogical and vague.[61]

Implementation of the Strategy for Development of the Public Procurement System in Montenegro[62] has shown that its measures are not defined so as to measure real improvements, but to gauge only imaginary progress in this area.[63] For example, the first Semi-annual Report on Implementation of the Action Plan for 2016 states that the capacities of the competent institutions have been strengthened and that their cooperation has been improved. However, the report does not specify the results achieved, such as comparing the number of violators of the Public Procurement Law prosecuted by the Inspection for Public Procurement with its increased capacities or examining the results achieved by the State Commission after the appointment of its President and the hiring of two more state officers, including the Secretary of the State Commission. In the meantime, the problems remain the same – a lack of accountability, transparency and political will to combat corruption in public procurement, as well as the competent institutions' poor cooperation and weak capacities.[64]

A Special Police Department was established to perform under the direct supervision of the SPO, and it is now working at full capacity, although with significant delays. The process of adjusting police officers and prosecutors to their new roles and competences deriving from the shift from judicial-led to prosecutorial-led investigation is ongoing and faces many problems. (See: The fight against organized crime)

The Law on Amendments to the Law on Free Access to Information has been drafted but not yet adopted. This law introduces provisions which regulate the reuse of public sector information, but it ignores the existing problems in access to information. A key unresolved issue is a legal loophole which allows authorities not to act upon decisions made in favour of a claimant by the Council of the Agency for Protection of Personal Data and Free Access to Information.[65] For example, in July 2015, the Agency upheld Institute Alternative's complaint against the Public Procurement Administration (PPA), instructing the PPA to provide us with information. More than a year later, the PPA had still not acted on the agency's decision. The agency's capacities remain insufficient to answer the large number of complaints which arrive on its doorstep. In 2016 alone the Agency failed to act on 12 complaints submitted by Institute Alternative – i.e. 12 complaints are still pending, although in all cases the legal deadline has expired.

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[59] Adopted in July 2016, as an Annex to the Action Plan for Chapter 23. The strategy for prevention of corruption and organized crime 2010-2014 and the accompanying action plans expired in late 2014.

[60] Center for Development of NGOs, Center for Civic Education, Network for Affirmation of NGO Sector, Centre for Monitoring and Research and Institute Alternative.

[61] Report from the public hearing on the Draft Operational Document for Preventing Corruption in Particularly Vulnerable Areas, available at: http://www.pravda.gov.me/biblioteka/izvjestaji (Only in Montenegrin)

[62] Adopted in December 2015 for the period 2016–2020. The first Semi-annual Report on Implementation of the Action Plan for 2016 was adopted in July 2016.

[63] Implementation of measures from the Strategy for Development of the Public Procurement System is not improving this area. Institute Alternative, available at: http://institut-alternativa.org/realizacija-mjera-iz-strategije-razvoja-sistema-javnih-nabavki-ne-vodi-unaprijedenju-ove-oblasti/?lang=en

[64] Contracting authorities regularly violate the law, and are not held accountable, while the competent institutions let the statute of limitations come into force.

[65] Institute Alternative, Open Data in the Law on FOI – Ministry of Culture to remedy deficiencies and ambiguities, available at: http://institut-alternativa.org/otvoreni-podaci-u-zakonu-o-spi-predlagac-da-otkloni-nedostatke-i-nejasnoce/?lang=en

The Agency for the Prevention of Corruption was established in January 2016, surrounded by controversy. The agency started work with less than half of the expected number of employees[66] and the envisaged systematization of workplaces was not yet filled,[67] while the Rulebook on Internal Organization and Systematization was adopted without any previous needs assessment.

The agency's budget planning has been flawed for two years in a row now and marked by violations of the procedure prescribed by the Law on Prevention of Corruption. It is certain that the competent parliamentary committee will not review the agency's draft budget this year either, at least not before adopting the government's budget proposal. The agency's council discussed its draft budget and submitted it to the Committee for Economy, Finances and the Budget. However, the committee did not discuss it because of a lack of quorum and the unexplained absence of the agency's director. The agency's budget for 2016 has also bypassed the committee, while the agency's council discussed it only after the government formally adopted it. Therefore, it was unable to influence the final budget.[68]

The appointment of the agency's director was highly dubious, being marked by allegations of a lack of results when he served as head of the police department for combating corruption and organized crime and his close ties to the vice-president of the DPS. His appointment also lacked transparency, since the session of the council when candidates for this position were interviewed was closed to the public.69 The agency continued to keep its key activities away from the public by introducing a practice of deciding ad hoc which session of the council would be open to the public and which not. It also forbade NGO representatives from monitoring the council's sessions.[70] In September, the director announced new regulations on media accreditation on the basis of which he would personally assess who could and who could not attend the council's sessions.[71] In doing so, not only did he try to impose unprecedented media censorship, but he also interfered in the functioning of the council, completely contrary to the law.

The agency verified[72] 91.7% of assets declared by public officials planned for verification for 2016,[73] which represents some 30% of the total number of registered public officials.[74] The agency also filed requests to begin misdemeanour procedures for determined irregularities. All irregularities referred to failure to submit an assets declaration, submitting incorrect data or for not transferring management rights in companies to another person.[75] All penalties imposed are below the legal minimum, since the Law on Prevention of Corruption prescribes fines between 500 and 2,000 euros for such misdemeanours.[76] However, the agency has recognized this problem and filed 17 complaints against decisions by the competent misdemeanour courts for issuing a warning and imposing excessively lenient penalties. The Higher Misdemeanour Court has adopted three complaints so far, while other procedures are ongoing.

Misdemeanour	Filed requests for misdemeanour procedure	Resolved	Number of imposed penalties	Total imposed penalties	Average penalty
No assets declaration submitted	272	105	76	18.565€	244.27€
Incorrect data submitted	30	10	10	1.100€	110€
Did not transfer management rights in companies to another person	48	26	19	5.185€	272.9€

Figure 4: Fines imposed for violations of the Law on Prevention of Corruption for the period March-June 2016[77]

[66] Inherited from the Commission for Prevention of Conflict of Interest and the Directorate for Anti-Corruption Initiative.
[67] There are still six empty workplaces remaining out of 55 systematized. Report on Implementation of Action Plan for Chapter 23, January-June 2016, available at: http://www.gov.me/sjednice_vlade/167 (No. 6)
[68] "The Director of the agency has circumvented the law by excluding the council and parliament from the preparation of the agency's budget." Happy New Agency, Institute Alternative, January 2016, available at: http://institut-alternativa.org/sretna-nova-agencija-uspostavljanje-crnogorske-agencije-za-sprjecavanje-korupcije/?lang=en
[69] http://www.vijesti.me/vijesti/sreten-radonjic-direktor-agencije-za-suzbijanje-korupcije-853763
[70] First five months of work of the Agency for Prevention of Corruption, available at: http://institut-alternativa.org/prvih-pet-mjeseci-rada-agencije-za-sprjecavanje-korupcije/?lang=en
[71] Radonjić: I will not allow media who report inaccurately to report at all, Portal Vijesti, available at: http://www.vijesti.me/vijesti/radonjic-medijima-koji-izvjestavaju-netacno-necu-dozvoliti-da-izvjestavaju-902462
[72] Cross-check with data held by other institutions.
[73] In the period January-September 2016 the agency verified 1320 of 1439 assets declarations planned for verification. Third Quarterly Report on Implementation of the Working Plan of the Agency for 2016, November 2016.
[74] Total number of public officials is 4.399. Ibid.
[75] Ibid.
[76] Article 103 of the Law on Prevention of Corruption («Official Gazette of Montenegro», No. 53/2014, December 19, 2014).
[77] Average sentences calculated by Institute Alternative, based on data from the Third Quarterly Report on Implementation of the Working Plan of the Agency for 2016, June 2016.

The Agency keeps records of individuals' donations to political parties which it publishes on its website, although only the name and surname of the individual who donated is supplied, without any other information that could be helpful to distinguish actual donors. The most recent such example was when a person with the same name and surname as the agency's director donated 2,000 euros to the DPS.[78] Based on the published information, it is impossible to determine whether it was the director himself.

In the first nine months of 2016, the agency received 46 reports that the public interest had been jeopardized or about suspicions of corruption and seven requests for whistleblower protection.[79] Of these seven cases, three are still under administrative procedure. Four cases have been resolved, with the agency issuing opinions granting two persons whistleblower status, while in another two cases, persons reporting suspicions of corruption received negative opinions. In the most widely reported case of misuse of public funds for party purposes, Patricia Pobrić, who reported it, was not granted whistleblower status and the protection deriving from it by the agency.[80]

Case of Patricia Pobrić

In June 2016, a former employee of the hotel "Ramada" reported to MP Mladen Bojanić that meetings of the SD were being paid for from the budget of the Railways Directorate.[81] Following this public disclosure, the manager's employment contract at the hotel was not renewed when it expired.

While waiting for a reaction from the Agency, the Prime Minister said publicly that Pobrić should not have published business data, thus **prejudging the decision of the Agency and discouraging other potential whistleblowers in the country.**

In August, the Agency decided not to grant Pobrić whistleblower status and declared her a person connected to a whistleblower.[82]This decision implies that a whistleblower should submit their report only to the agency itself and not to other personalities, institutions or organizations, as prescribed by the law.83 Therefore, this case illustrates that the agency has taken a stance which is in contrast to its role, and that it presents itself as having a monopoly on "blowing the whistle".

The work of the Special Prosecutor's Office (SPO) represents a rare example of progress made in the area of the rule of law, in spite of the fact that its results remain limited to processing cases of corruption in the municipality of Budva. However, the SPO and the Chief State Prosecutor's Office face constant obstructions of their work, such as lack of cooperation from the Director of Police (for example, while forming the Special Police Department), a lack of adequate IT infrastructure in the SPO, an inability to directly access the databases of other state authorities; a lack of reliability of databases in general, the passivity of the Agency for Prevention of Corruption and the Administration for Prevention of Money Laundering and Terrorist Financing etc.

The main challenge in the prosecution's work are ongoing financial investigations against at least 185 persons, the outcome of which is yet to be seen. Additionally, the prosecution has opened more than 900 new cases[84] in 2016, which is why it has to be provided with adequate capacities, IT equipment, premises and the budget needed to successfully complete these investigations.

[78] Available by searching donations for political parties for Parliamentary Elections 2016 at the following link: http://antikorupcija.me/me/kontrola-politickih-subjekata-izbornih-kampanja/registri/petnaestodnevni-izvjestaji-prilozima-kampanji/
[79] The government's contribution to the European Commission's Report, for the period May-September 2016.
[80] Third Quarterly Report on Implementation of the Working Plan of the Agency for 2016, November 2016.
[81] Organizational unit of the Ministry of Transport and Maritime Affairs, governed by Ivan Brajović, president of the SD.
[82] The agency justified this decision by arguing that she reported suspicions of corruption to an MP, Bojanić, rather than the agency.
[83] Article 45 of the Law on Prevention of Corruption, («Official Gazette of Montenegro», No. 53/2014, December 19, 2014.
[84] Interview with Hoyt Brian Yee, Deputy Assistant Secretary of USA, for Daily "DAN", 5 October 2016, available at: http://www.vijesti.me/izbori2016/hojt-brajan-ji-ne-uticemo-na-izbore-ni-na-formiranje-vlade-906168

8. FIGHT AGAINST ORGANISED CRIME:
Insufficient progress in solving burning issues

Although prosecutors and the police now cooperate better than previously, this is not reflected in the results achieved in identifying the perpetrators of criminal acts. The head of the Special Police Department was appointed after six months of disagreement between the Special Prosecutor and the Police Director, which was followed by significant delays in filling other positions in this department. The Special Prosecutor's work has been marked by the so-called "special war" which was waged against him after he began investigating cases of high-level corruption. Although there has been visible progress in regard to detecting and seizing drugs compared to last year, results remain limited in the areas of money laundering, human trafficking and loansharking.

In 2011, Montenegro introduced a system of prosecutorial-led investigations.[85] This complete shift from judicial-led to prosecutorial-led investigation has been one of the most turbulent changes. Since then, the process of adjustment to new roles and competences has been beset by many problems. The police and prosecution continue to blame each other for the lack of results, although cooperation between these institutions has improved since 2014.[86] However, the results still do not reflect this, with half of the perpetrators of crimes remaining unidentified.[87]

In March 2016, the Special Police Department was established following over six months of disagreement and differing interpretations of the Law on Special Prosecution.[88] The law insisted on agreement between the director of the Police Directorate and the Chief Special Prosecutor, but appeared to lack any authority over these two institutional leaders. The appointment of the Special Police Department's head and his whole team was therefore delayed by more than half a year. The department is now working at full capacity, while 20 systematized posts were filled, albeit with significant delay, in September.

At a parliamentary committee session in February 2016, Special Prosecutor Milivoje Katnić claimed that a "special war" was being waged against him, referring to pressure exerted by other institutions whose intention was to stop or slow down the SPO's activities. This began after the SPO started investigating a high-level corruption case against former high-ranking DPS official Svetozar Marović, as well as pursuing related investigations into corruption networks in Budva. Katnić insisted that delays in the appointment of the head of the Special Police Department were also a direct obstruction of his work and the work of the whole SPO.

The system for combating money laundering remains weak and lacks good coordination: the system of data exchange is not adequately connected; poorly managed or incomplete statistics are taken care of manually; there are no unified models for managing statistics and the information systems of the institutions in the chain are not interlinked.[89]
The government has enacted a 2016 Action Plan for implementation of the 2012-2018 Anti-trafficking strategy.[90] The action plan mostly consists of preventive activities,[91] and while five measures relate to more efficient prosecution, they merely represent regular publishing of indictments and verdicts for the criminal act of human trafficking.

Regarding the seizure of assets, the institutional preconditions are still being set up. The Property Administration was established in December 2015 as an independent body[92] responsible for the seizure and confiscation of assets. The Property Administration[93] has so far published a semi-annual report on seizure and confiscation of assets, identifying temporarily and permanently seized assets and items currently in procedure,[94] without providing data on the valuation of assets.

[85] From 2011 to 2013, prosecutorial-led investigation was applied only in cases of organized crime, corruption, terrorism and war crimes.
[86] Data gathered in 2016 by Institute Alternative through face to face interviews within the project "Prosecutorial investigation in the Western Balkans – How to achieve effectiveness?".
[87] The total percentage of resolved crimes decreased by 14%, i.e. from 67.8% in 2010 to 53.8% in 2015.
[88] According to the law, the head of the Special Police Department shall be appointed by the Director of the Police Directorate, with the consent of the Chief Special Prosecutor.
[89] National Money Laundering and Terrorist Financing Risk Assessment, December 2015.
[90] Action Plan 2016 for Anti-trafficking Strategy 2012-2018, Office for Fight Against Trafficking in Human Beings, available at: http://www.antitrafficking.gov.me/rubrike/akcioni-plan/161225/Vlada-donijela-Akcioni-plan-za-implementaciju-Strategije-za-borbu-protiv-trgovine-ljudima-za-2016-godinu.html
[91] Educational activities for law enforcement agencies, media campaigns, promotion of SOS hotline, etc.
[92] It was previously part of the Ministry of Finance.
[93] Department for Management of Temporarily and Permanently Seized Property
[94] The number of permanently confiscated assets amounts to 32, of which 30 are firearms and ammunition which was handed over to the Police Administration for destruction. The remaining two cases are tobacco products, which are also to be destroyed. The valuation of assets has not been performed.

In 2011 there were 35 organized criminal groups (OCGs) active on Montenegrin territory,[95] while two years later the SOCTA Mid-Term Review gave a number of 20 active OCGs.[96] In March 2016, the head of the Criminal Police Sector stated that the number of OCGs had decreased by 43%.[97] Although the numbers seem impressive, it is worth looking beyond the statistics provided, as in fact, although some OCGs were abolished through police action, some, usually smaller groups, merged with each other or with large entities.

Since 2014, there has been a series of gunfights and explosions in Montenegrin cities, as conflicts between Montenegrin criminal clans have escalated. More than 10 members of clans or their associates have been killed in Bar, Kotor, Cetinje and Budva. Failure to prosecute prominent criminal clans involved in international overseas drug smuggling and with close connections to international criminal groups has resulted in new risks to national security and the safety of citizens.

There have been new cases in the fight against drug trafficking. In 2015, the police seized around 238 kg of drugs,[98] while they seized 3.5 times more in the first eight months of 2016.[99] However, this is the only visible progress: no results are observable in investigating money laundering and human trafficking. Up to September, the SPO formed 12 cases on the basis of notification by the Administration for the Prevention of Money Laundering and Terrorism Financing, but until April there were no new investigations of money laundering.[100]

In the area of money laundering, 2016 has shown how poor one of the most lauded efforts to fight organized crime in fact was. In 2011, Safet Kalić, his wife Amina and his brother Mersudin were convicted of laundering 7.7 million euros between 2005 and 2011. Five years later, in July 2016, the Appellate Court announced their acquittal. For years, the government had been using this case to show its dedication to the fight against organized crime in general and money laundering in particular, especially in their contributions to EC reports and when dealing with their international partners. The verdict of the Appellate Court now diminishes these efforts, and the Chief State Prosecutor and the Special Prosecutor have announced that following an investigation they will determine which prosecutors will be held accountable for this case. The Kalić family now has legal grounds to sue the country for compensation, which could run to millions of euros, for groundless detention, the restitution of confiscated assets, compensation for lost profit and the deterioration of seized assets.

In the area of human trafficking, no new investigations have been launched.[101] Montenegro has not yet established a central evidence record for children who are subjected to forced labour as beggars, although they represent an especially vulnerable group with a high risk of becoming victims of human trafficking.

Although loansharking has been recognized as a growing problem in the country,[102] in 2015 and the first six months of 2016 only three verdicts were passed for this criminal act. However, as stated in the MoI's annual performance report, the police have dealt with 15 persons for carrying out the crime of loansharking through the police intelligence project "Loan", which consisted of 12 actions.

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[95] Organized Crime Threat Assessment of Montenegro, 2011.
[96] Serious and Organized Crime Threat Assessment of Montenegro, 2013.
[97] Pavićević: Criminal organizations are falling apart in weakness, CdM, March 12th 2016, available at: http://www.cdm.me/english/pavicevic-criminal-organizations-are-falling-apart-in-weakness
[98] Annual Performance Report, MoI.
[99] Website of the Police Administration, available at: http://www.mup.gov.me/upravapolicije/vijesti/165123/U-Podgorici-otkriveno-oko-20-kg-skanka-a-u-Beranama-5-gr-heroina-osumnjiceni-liseni-slobode-od-pocetka-godine-policija-otkrila-i.html
[100] We do not lead any investigation into money-laundering, Daily Dan, available at: http://www.dan.co.me/?nivo=3&rubrika=Hronika&clanak=541326&datum=2016-04-10&naslov=Ne vodimonijednuistraguzapranjepara
[101] According to statistical data on human trafficking cases, available at: http://www.antitrafficking.gov.me/rubrike/statistike/97540/Statisticki-podaci-o-KD-trgovina-ljudima.html
[102] National Money Laundering and Terrorist Financing Risk Assessment, December 2015.

09. POLICE REFORM:
Many documents, implementation delayed

The Strategy for Development of the Police Administration is being implemented with major delays – only a third of the envisaged measures have been implemented.

The measures implemented so far have dealt with the development of a normative framework, including the MoI's innovative Integrity Plan, the initiation of amendments to laws and the development of strategic documents. One of the starting points was to develop or upgrade evidence management; however, only 2 of 8 such measures have been implemented yet, with the most important one missing: statistics for secret surveillance measures. In first half of the year only 12 of the 34 measures envisaged were implemented. It is obvious that the majority will be delayed, which will bring into question the implementation of the whole strategy. This is a concern given that the most important measures are yet to be realized.

Furthermore, the strategic documents for the negotiation process, the Action Plans[103] for Chapters 23 and 24, operationalize problems within the rule of law. The Action Plan for Chapter 23 envisages four measures[104] related to police work, which deal with activities currently carried out routinely by the MoI and the Police Administration. Thus, these measures provide no actual improvements in integrity or in the police's operational work.

The Operational Document for Preventing Corruption in Particularly Vulnerable Areas, adopted in June 2016, sets out additional measures in the area of prevention of police corruption. Two measures are also related to routine activities: monitoring of implementation of the MoI's Integrity Plan and conducting training on the topic of integrity, while additional measures envisage the employment of additional staff within the Internal Control Police Department and close monitoring of the implementation of the recommendations of the Council for Civic Control of the Police. The Action Plan for Chapter 24 also sets out a number of measures whose implementation should ensure better surveillance of border crossings, enhance regional police cooperation and result in swift and efficient processing of high-profile cases of organized crime. The most recent report,[105] presented in mid-July, implies that almost all measures related to the police have been implemented.[106]

According the Strategy for the Development of Police Administration, in the upcoming period the priority should be to establish a specialized unit for human resources management in order to address deficiencies in the recruitment of police officers.

10. FIGHT AGAINST TERRORISM:
Scope of the problem unknown

Although the phenomenon of foreign terrorist fighters is gaining momentum worldwide, only one Montenegrin citizen has been arrested so far on suspicion of joining foreign armed forces. Additional data on the number of persons from Montenegro who have been recruited or have gone to foreign battlefields is still not available.

In December 2015, the government has adopted the 2016-2018 Strategy for Combating Violent Extremism and its accompanying Action Plan. No reports on the implementation or state of play in this area have been produced by the Bureau for Operational Coordination, the institution responsible for its implementation. Neither is there any publicly available government data on how many persons from Montenegro have been recruited or have gone to foreign battlefields.

[103] The action plans for Chapters 23 and 24 were adopted in February 2015.

[104] These measures relate to carrying out internal controls within the MoI and Police Administration; investigating charges for corruption within the MoI and Police Administration; implementing measures to prevent high level corruption within the MoI and Police Administration; conducting permanent campaigns on the manner of reporting corruption and measures to protect citizens who report corruption.

[105] Report on Implementation of the Action Plan for Chapter 24 for January-July 2016, available at http://www.gov.me/sjednice_vlade/167 , No. 7.

[106] Measures relating to the police which have not been implemented are training for officers in the area of forensic analysis and procurement of software due to missing financial resources.

Also recently adopted, the Strategy on Police Administration Development envisages the establishment of mechanisms for detecting, monitoring and investigating persons with links to terrorism and extremism in Montenegro, but activities in this area have not been implemented.

Law enforcement agencies lack experience in processing this type of crime, something which has been recognized as a potentially aggravating circumstance in this area. In September 2016, a Montenegrin citizen was taken into custody on landing at Podgorica airport on suspicion of fighting for foreign armed forces, the first case of arrest and criminal charges against a citizen of Montenegro.[107] Thirty days later, he was released due to the lack of a prosecutor's order for extension of detention.

11. FUNDAMENTAL RIGHTS:
Far from reaching progress

In the past, the government has adopted various action plans and strategies aimed at fostering and accelerating the social inclusion of marginalized groups. However, these efforts do not provide sufficient control of the funds use for employing these groups, nor do they provide a full systematic approach to all types of discrimination. The Agency for Personal Data Protection and Free Access to Information suffers from a lack of financial and human resources, while an overall systematic approach to strengthening the agency's capacities is lacking. The police and judiciary violated the personal data of many citizens in 2016. Though new legal provisions could improve the current state of play regarding the organization of public assemblies in Montenegro, they fail to address two everlasting issues: administrative procedures and good policing.

The Anti-discrimination Law is currently being amended for the third time. The latest draft amendments to the law do not adequately address the key shortcomings of the current legal framework. CSOs and the Ombudsman's office have emphasized the lack of definition of all the exceptions from discrimination, the lack of provisions on discrimination against intersex people, discrimination via audio and video surveillance, mobile phones, Internet and social networks etc.[108]

Some improvements have been made in human resources at the Ombudsman's office, in the anti-discrimination department. In 2016, three new persons have been employed at the Ombudsman's office: a Deputy Ombudsman for protection of children's rights, a consultant on protection against discrimination and an advisor on the prevention of torture.

Strengthening non-discrimination capacities is important due to the increased[109] number of complaints about discrimination in 2016. These cases mostly concern discrimination on the grounds of nationality, group affiliation, gender, political affiliation and religious affiliation. Of 17 recommendations on discrimination made in 2016, only three have been implemented and one has not, while implementation of the others is still being monitored. Of 13 recommendations on discrimination made in 2015, 9 were implemented and 3 were not, while the Ombudsman has no data on the implementation of the last case. These cases mostly concerned discrimination on the grounds of nationality, political and religious affiliation.[110]

The National Council for Gender Equality was formed in October 2016, as a new institutional mechanism responsible for strengthening gender equality by reviewing implementation of the relevant laws and regulations. The council is a much needed mechanism for strengthening women's equality and decreasing family violence and the abuse of women. Between January and October 2016, 349 women called the Women's Safe House asking for help.[111]

Funds for the professional rehabilitation of people with disabilities have not been spent effectively, and have thus failed to achieve the key aim of including this group in the labour market. Till September 2016, only €6,290,810 had

[107] Arrested on suspicion of having committed a criminal offence – participation in foreign armed forces, available at: http://www.mup.gov.me/upravapolicije/vijesti/164781/Lisen-slobode-zbog-sumnje-da-je-pocinio-krivicno-djelo-ucestvovanje-u-stranim-oruzanim-formacijama.html
[108] Report on the public debate on the Draft Law on Amendments to the Anti-discrimination Law, August 2016.
[109] The number of complaints has increased in the first six months of 2016, with 14 more than the previous year. 87 cases were resolved, while 10 complaints have not yet been resolved.
Information on anti-discrimination work by the Institution of Ombudsman between January and June 2016.
[110] Response to a free access to information request, 21.11.2016.
[111] Discrimination as tradition. Available at: http://www.monitor.co.me/index.php?option=com_content&view=article&id=6998:poloaj-ena-u-crnoj-gori-diskriminacija-kao-tradicija&catid=4846:broj-1344&Itemid=6199

been spent for the professional rehabilitation and employment of people with disabilities, rather than the allocated €49,336,81.[112]

The public perception is that discrimination in employment is a prominent issue, as shown by two public opinion surveys conducted in 2017.[113] The type of discrimination in employment cited most commonly by respondents (81.8%) is based on political affiliation. The discrimination trend in employment has been strong since 2010, with every other citizen stating that political discrimination is present.[114] Between January and June 2016, the Ombudsman's office worked on 6 complaints of political discrimination in employment, the second most prominent issue within this area according to the Ombudsman's data.[115] The Montenegrin public is most strongly prejudiced against homosexuals (76% of respondents) and Roma people. Social distance is largest from drug-addicts, the LGBT population, and the sufferers of HIV and AIDS.[116]

In 2016, the Agency for Personal Data Protection and Free Access to Information employed four new civil servants, while two employees were reallocated as controllers in the department for personal data protection surveillance. Back in 2013, the Agency systematized 26 working positions for 35 civil servants. Three years later, the Agency has not filled all the posts. There are 31 people working at the agency: 22 civil servants are employed permanently, two are on fixed-term contracts, three are hired temporarily and four are volunteers.[117] According to the agency's 2016 action plan, due to a reduced budget, capacity will be strengthened only in the free access to information department.[118]

The most recent case of violation of data protection happened in June 2016, when investigation judges repeatedly asked mobile operators to submit data on the telecommunication traffic of all citizens of Montenegro. Following this case, the agency voiced its future plans to control the police's protection of personal data, especially that of citizens who have never been investigated or suspected of committing criminal acts. After six months of waiting, the Supreme Court finally decided that there were no legal grounds for initiating disciplinary proceedings against the judges, even though it previously stated that the judges should not have permitted to the police to collect this specific data.

A further aggravating factor in the control of personal data is the fact that the prosecution, police and judiciary keep no statistics on the use of secret surveillance, while statistics on measures performed by the National Security Agency remain secret.

A new Law on Public Assemblies and Public Performances introduced changes to how public gatherings are organizing by increasing the responsibilities of the state authorities, reducing the responsibilities of organizers and allowing public assemblies to be organized closer to the premises of key institutions.[119] Nevertheless, the law fails to address two key problems: the cumbersome administrative procedures and the good policing of assemblies. The first of these derives from the overlapping competencies of authorities at the national and local levels, leaving organizers to wonder whom they should approach first, while the second stems from the lack of facilitation by the MoI and Police Administration during assemblies, excessive use of force and a lack of transparency.[120]

Institutions have not yet resolved the attacks of citizens, police officers and media, on the night of last October's protests.

In October 2015, following violent civic and opposition protests against the government, many CSOs, especially the Council for Civic Control of the Police, recognized the lack of integrity and transparency in the actions of the police and condemned the excessive use of force which caused suffering to numerous citizens.[121] Eight months after the protest,

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[112] According to data provided by the Ministry of Finance and Employment Office to NGO Association of Youth with Disabilities
[113] One conducted by the Ministry for Human Rights and Minorities, the other by the NGO Centre for Democracy and Human Rights-CEDEM.
[114] Public opinion research conducted by CEDEM in December 2015.
[115] Most complaints refer to discrimination on the gender-legal status (14), in the area of work and employment, Information on anti-discrimination in the scope of the work of the Institution of Ombudsman between January and June 2016.
[116] Public opinion research conducted by the Ministry for Human Rights and Minorities in November 2015.
[117] According to data provided by an employee at the Agency for Personal Data Protection.
[118] The agency's 2016 Action plan.
[119] 10 metres from the government or 15 metres from the parliament, the presidential building or the Constitutional Court. The previous provisions kept demonstrations at a distance of 50 metres.
[120] See the report on Freedom of Assembly in Montenegro issued by Institute Alternative and ECNL, available at: http://media.institut-alternativa.org/2016/07/Montenegro_WBA-Project-Report1.pdf
[121] Challenges of Policing the Protests in Montenegro, Aleksandra Vavić, Ivana Bogojević, Institute Alternative, available at: http://pointpulse.net/magazine/challenges-policing-protests-montenegro/

the Ombudsman's office submitted criminal charges against the commander of the Special Antiterrorist Unit (SAU)[122] for covering up the names of the 28 police officers involved in the brutal beating of citizens, leading to the MoI suspending him. The Magistrate's Court initiated the trial of two SAU officials who voluntarily admitted their participation in the beatings. After being postponed three times, the trial was finally held on 11th November. The commander of the special unit and the Deputy Commander of the SAU refused to answer the prosecutor's question about whether the SAU's actions on the night of the protests were legal or not.[123] The trial will continue on 2 December.

12. FREEDOM OF EXPRESSION:

Media freedom remains in shackles

In 2016, amendments to the Law on Media which could have guaranteed greater independence for RTCG, the public broadcaster, better protection of journalistic integrity and order in the electronic media market were not adopted. Insufficient progress has been made in resolving attacks on journalists. Threats to journalists are not deemed criminal acts. Whether improvements can be made in this area depends on the prosecution and the police administration, which need to cooperate with the newly elected government's Commission for Monitoring the Competent Authorities in Investigating Cases of Intimidation and Violence against Journalists, Murders of Journalists and Attacks on Media Property (henceforth the Commission).

The financial and reporting independence of the public broadcaster, enhanced control of how state authorities advertise in the media and greater protection of journalists' integrity remained unaddressed, as in 2016 parliament failed to pass the necessary amendments to the Law on Electronic Media, the Law on Public Broadcasting Funds and the Law on Media.

The MoI registered 15 attacks on the media in 2015. Eight perpetrators were identified.[124] Between January and June 2016, three cases and four individuals were brought to court, with two attackers being granted parole and one cleared of all charges.[125] Of 20 cases of attacks on the media identified in the past two years, only five have been resolved, while the other 15 remain unresolved.[126]

Violent civic and opposition protests last October were followed by the arrest of journalists and threats to editors on social media. There were at least eight incidents in which journalists were hurt, threatened or prevented from doing their work in the field.[127]

The most recent example was in October 2016, on election day, when a journalist for daily Vijesti, Siniša Lukoviæ, was threatened for reporting an incident regarding an irregularity at a polling station in Tivat. After this case was reported to the police, the Basic Prosecutor's office fined the perpetrator €300 for a misdemeanour, even though there is no doubt that the threats should have been deemed a criminal act.[128]

Institutional capacity to ensure freedom of expression and media protection is weak. After the government's commission failed to deliver results[129] in 2015, it was formed once again in 2016, with a two-year term. The commission has nine members, the majority being representatives of CSOs and the media, and by October 2016 it had held three sessions.

In August 2016, a new parliamentary committee was formed to supervise investigations of attacks on the media. It has held one control hearing of the Chief Prosecutor and Chief Special Prosecutor, regarding the murder of Duško Jovanović, chief editor of the daily DAN, a case that in 12 years has still not reached a conclusion. Further results of this committee's work are yet to be seen.

[122] Due to beatings by 28 SAU officials of one individual on the night of the protest.
[123] "They got what they wanted", http://www.vijesti.me/vijesti/sto-su-gradani-trazili-to-su-dobili-911508
[124] MoI Annual Performance Report , 2015.
[125] The government's contribution to the EC report for May-September 2016.
[126] Human rights action report, Prosecution of attacks on media in Montenegro, 2004-2016, November 2, 2016
[127] Crimes against journalists in the shadow of unresolved attacks and killings, Portal Vijesti, available at: http://www.vijesti.me/vijesti/zlocini-protiv-novinara-u-sjenci-nerasvijetljenih-napada-i-ubistava-858368
[128] State Prosecution sends ugly message with milder qualification http://www.vijesti.me/vijesti/drzavno-tuzilastvo-blazom-kvalifikacijom-salje-ruznu-poruku-908005
[129] The Agency for Personal Data Protection and Free Access to Information and the police blocked access to the personal data of people covered by the investigation, which obstructed the further work of the Commission. See Report on the work of the Commission for Monitoring the Competent Authorities in Investigating Cases of Intimidation and Violence against Journalists in 2015.

13. MIGRATIONS AND ASYLUM

In November 2015, the government adopted a plan dealing with the handling of potential flows of refugees.[130] However, its details are unknown to the public and it was not followed by a substantial policy debate. The prime minister has not yet ruled out closing the country's borders. However, in September 2015 the government adopted a report which pledged to improve the capacity of the country's centres and shelters for asylum seekers in order to prepare for an influx of up to 2000 refugees per day.[131]

The decision on whether to accept the refugees is, in the final instance, purely political. This was reiterated at the February 2016 parliamentary control hearing of the minister of labour and social care: the plan is in place, but the government decides whether to accept refugees.[132] However, in his speech at the general debate of the 71st session of the United Nations general assembly, the prime minister said that he considers it exceptionally important that this subject was on the agenda of the special summit under the auspices of the UN and that Montenegro is strongly committed to the implementation of the resolution which was adopted on that occasion.[133]

The new Law on Asylum, planned for implementation in 2017, has not yet been adopted, although its adoption was foreseen by the government's agenda for 2015.[134] The decrease in the number of asylum seekers is notable – from 3,554 requests in 2013 and 2,312 in 2014 to 1,611 in 2015.135 Between January and August 2016, 133 asylum requests were submitted.[136]

14. REGIONAL ISSUES AND INTERNATIONAL OBLIGATIONS:

Status Quo

Although the agreement on border demarcation with Kosovo was signed in August 2015, the Parliament of Kosovo has not yet ratified it. The Montenegrin Government has stated that even though this is an internal issue for the Republic of Kosovo, they are ready to reconsider potential omissions, although not without taking into account Montenegro's state and national interest.[137] Thus, this issue is still unresolved. Aside from this, there have been no major changes since 2015.

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[130] Action Plan for the Performance of the Competent Authorities and Institutions in the Case of a Major Influx of Migrant Refugees in Montenegro. Montenegro is ready for a possible influx of refugees, Portal Vijesti, author MINA, available in Montenegrin at: http://www.vijesti.me/vijesti/crna-gora-spremna-za-eventualni-priliv-izbjeglica-864804

[131] In July and August 2015 there were only 4 and 5 asylum requests, See more: Information on actions of competent authorities and institutions in the case of larger influx of refugees and migrants into Montenegro, Government of Montenegro, September 2015, Available in Montenegrin at: http://www.gov.me/sjednice_vlade/128

[132] Committee for Human Rights and Freedoms, Parliament of Montenegro, Report on the control hearing of Zorica Kovačević, Minister of Labour and Social Care and of the coordinator of the Coordinating Committee following the implementation of the Srategy for Finding Durable Solutions for Internally Displaced and Disabled Persons, with special focus on Konik Camp II.

[133] PM Đukanović delivers speech at General Debate of 71st session of UN General Assembly, available at: http://www.gov.me/en/News/165183/PM-dukanovic-speaks-to-General-Debate-of-71st-UN-General-Assembly.html

[134] MoI Performance Report, 2015, available at: http://www.gov.me/biblioteka/izvjestaji?pagerIndex=4

[135] In the first nine months of 2015, the total number of asylum seekers in the country was 1543, with significant drops in certain months when only a few requests were submitted. In July and August 2015, there were only 4 and 5 asylum requests. See more: Information on actions of competent authorities and institutions in the case of larger influx of refugees and migrants into Montenegro, Government of Montenegro, September 2015, Available in Montenegrin at: http://www.gov.me/sjednice_vlade/128

[136] In this period, there was no need to use alternative accommodation; Government's Contribution to the European Commission's Report on Montenegro for 2016, for May-September 2016, available at: http://www.gov.me/sjednice_vlade/169

[137] The issue of the border between Montenegro and Kosovo is solved, but corrections are still possible, Srđan Janković, Radio Free Europe, available at: http://www.slobodnaevropa.org/a/granica-crna-gora-kosovo-rijesena-korekcije-moguce/27421199.html

POLICY RECOMMENDATIONS

Based on the above presented analysis, the following general recommendations need to be considered for the policy areas covered by this study.

Legislative recommendations:

- Amend the **Law on Financing of Political Entities and Election Campaigns** in order to enable the Agency for Prevention of Corruption to control data submitted by institutions and political entities, and not only collect it.
- **The Law on Local Administration** needs to be further amended in order to specify the rules for human resource management at the local level, which have proved particularly worrisome;
- The upcoming work on amendments to the **Law on Civil Servants and State Employees** and relevant by-laws should address the persistent levels of politicization and non-merit based recruitment in public administration.
- **Law on Free Access to Information** should be amended in order to resolve existing problems in the area of freedom of information, particularly the legal loophole which allows authorities not to act upon decisions made in favour of claimants by the Council of the Agency for Protection of Personal Data and Free Access to Information.
- Adopt a **Law on the Parliament** that ensures more precise definition and differentiation of competences of the branches of government, that defines the obligation to report automatically on parliament's conclusions within a framework set as optimal by the lead committee, and that sets out penalties and sanctions for state institutions that fail to submit in a timely manner information on implementing parliament's conclusions, or that fail to submit responses to parliamentary questions.

To the competent authorities:

- **MoI in cooperation with the SEC should establish** a clear methodology on the register of voters. Firstly, a list of holders of citizenship who have not resided in Montenegro for two years prior to elections must be made, followed by the deletion of those names from the register of voters. Secondly, a reliable system of monitoring the migrations of residents must be established;
- **SEC** should introduce better recruitment procedures for electoral committees in terms of providing them with adequate training and instructions for elections;
- **The Ministry of Finance and local administrations** should open up the currently closed budget data and information of public finances in order to permit greater public scrutiny;
- **The Police Administration, the High Courts and the State Prosecution**, as institutions involved in the chain of applying secret surveillance measures, should keep records of statistical information on the application of such measures and make it transparent;
- **The Ombudsman's office** should ensure monitoring system in order to track implementation of its recommendations;
- **Ministry of Interior and Police Directorate** should ensure effective mechanisms for determining accountability and liability of abuse of powers by police officers;
- The **Police Administration** must cooperate with **The Government's Commission for monitoring the competent authorities in investigating cases of intimidation and violence against journalists, murders of journalists and attacks on media property**, by providing relevant information and documents that could help the investigation of the attacks on media and journalists.

To the Parliament:

- **Improve reporting on control and consultative hearings held;** make state institutions more accountable by adopting definite conclusions after hearings and by drafting detailed committee reports on the implementation of conclusions;
- **Introduce an obligation to conduct regulatory impact assessments** (RIA) for bills proposed by MPs.
- To Establish a unit dedicated to verifying the quality of the government's regulatory impact assessment **(RIA)** reports.

To the Government:

- Maintain good practices of proactive publishing of information important for the prevention of abuse of public resources, undertaken by the Government of Electoral Trust;
- Ensure transparent and comprehensive result-oriented monitoring of implementation of EU-related obligations, especially within the Chapters 23 and 24;
- Adopt a new Action Plan for the implementation of the Strategy for the Reform of the Judiciary (2017-2019) with emphasis on measuring the influence of implementation;
- Publish track record annexes to the bi-annual reports on the implementation of action plans for Chapters 23 and 24;
- Streamline procedures and criteria for the public funding of NGOs.

To the European Commission:

- Increase the transparency of accession negotiations via publishing the reports of expert missions on the approximation of Montenegrin legislation with EU standards.

Judiciary:

- Prepare new Action Plan for the implementation of the Strategy for the Reform of the Judiciary (2017 – 2019) with emphasis on measuring the effects of implementation;
- When it comes to recruitment in the judiciary, it is necessary to introduce reporting on the number of candidates who apply for each vacancy announcement (internal and public) and to publish score lists and justifications for appointments;
- Proactively publish the grades of presidents, judges, prosecutors and employees in the judiciary, while maintaining personal data protection;
- Encourage the presidents of courts and prosecutor's offices to start using official procedures for determining ethical and disciplinary responsibility in order to promote a culture of accountability in the judiciary;
- Inform citizens and interested parties in court procedures about opportunities for making complaints about the actions of judges and prosecutors, i.e. about the types of procedures that can be commenced against them.

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Email: office@bezbednost.org
Web: www.bezbednost.org

Lead Author :
Bojan Elek

Contributing Authors:
Katarina Đokić, Sofija Mandić,
Andrej Stefanović

Proofreading:
Alisa Koljenšić-Radić

Graphic Design:
Vladimir Gjorgjevski

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LIST OF ABBREVIATIONS

ACAS – Anti-Corruption Agency of Serbia

AP – Action Plan

BIA – Security Intelligence Agency

BIRN – Balkan Investigative Reporting Network

CINS – Centre for Investigative Journalism in Serbia

CSOs – civil society organisations

DSS – Democratic Party of Serbia

EC – European Commission

ECI – European Critical Infrastructures

EU – European Union

ICTY – International Criminal Tribunal for the Former Yugoslavia

ILP – intelligence-led policing

KOS – criminal intelligence system

KRIK – Crime and Corruption Reporting Network

LGBTI – lesbian, gay, bisexual, transgender and/or intersex

MoI – Ministry of Interior

MoJ – Ministry of Justice

MP – Member of the Parliament

NCEU – National Convention on the European Union

NGO – non-governmental organisations

OSCE – Organization for Security and Co-operation in Europe

ODIHR – Office for Democratic Institutions and Human Rights

REC – Republic Electoral Commission

RS – Republic of Srpska

RYCO – Regional Youth Cooperation Office

SIGMA – Support for Improvement in Governance and Management

SOCTA – Serious and Organised Crime Threat Assessment

SRS – Serbian Radical Party

UN – United Nations

UNHCR – the UN High Commissioner for Refugees

WB – Western Balkans

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INTRODUCTION

This national study on monitoring and evaluation of the rule of law in Serbia reflects on the development in the areas Political criteria, Chapter 23 and 24 from the acquis, for the period after the 2015 Country Report by the European Commission. The purpose of this policy study is to assess the trends in the areas under analysis in the Republic of Serbia. The study is conducted within the framework of the project Monitoring and Evaluation of the Rule of Law in Western Balkans (MERLIN WB), conducted by the European Policy Institute – Skopje in partnership with Institute Alternativa from Montenegro and the Belgrade Center for Security Policy from Serbia and funded by the European Fund for the Balkans. Based on the country studies, a policy paper covering the three countries (Macedonia, Montenegro and Serbia) will be produced.

It is not our purpose to replicate or interpret findings of the EC report. Rather, our intention is to provide a deeper and more focused, and at the same time - a comprehensive and objective insiders' view on the development on essential issues of rule of law. Consequently, we aimed to give a qualitative assessment for each of the issues under analysis, going beyond addressing technicalities.

We based our study on the jointly developed methodology. We identified the key areas under analysis: elections; parliament; government; civil society; civilian oversight over security forces; public administration reform; judiciary; anti-corruption; organized crime; fight against terrorism; fundamental rights and protection of minorities; asylum and migration; police reform and regional issues and international obligations. Most of the sub-areas correspond to the EC structure of monitoring and reporting, to ensure comparability. We applied process tracing[1] to determine the trends and examine whether there has been a backsliding or progress for each of the sub-criteria. This being said, we do not seek for rigor causality with the process tracing, but rather identifying the clues which can help affirming or weakening our hypotheses.

[1] David Collier, "Understanding Process Tracing," PS: Political Science & Politics 44, no. 4 (October 2011): 82330, doi:10.1017/S1049096511001429.

Executive Summary

Serbia checked most of the boxes that were warranted by its accession process to the EU in 2015, a fact which was recognised on 18 July when negotiations on Judiciary and Fundamental Rights (Chapter 23) and Justice, Freedom and Security (Chapter 24) were opened. The opening of these two chapters was a result of a long process that was characterised by several rounds of consultations regarding drafting of corresponding Action Plans, producing Negotiating Positions, and coordination efforts on the part of line ministries hitherto never seen before. The Belgrade-Pristina dialogue continued, despite the fact that the implementation of the already reached agreements was lagging. Finally, early elections were organised on April 24, when the incumbent Prime Minister's coalition won by a landslide and formed a new, decidedly pro-European Government. Despite the fact that the new parliamentary convocation now gathers parties sceptical toward or against the EU, there seem to be no obstacles when it comes to either support or legitimacy of the Government's pro-EU agenda.

However, if these technical aspects of accession talks are set aside, the current situation when it comes to the rule of law area leaves much to be desired. In the annual World Justice Project's Rule of Law Index for 2016, Serbia holds the same score when compared to the previous year; its ranking, however, fell by four positions, indicating stagnating reforms and no progress.[2] In their 2016 World Press Freedom index, Reporters without Borders claim that media freedoms declined from 2014 onwards, citing editorial pressure, public attacks against critics and faulty application of the media law package.[3] In addition, serious incidents involving law enforcement agencies continue to showcase all troubled spots and failures of state institutions, and disrespect for the rule of law principles. The most prominent one, the so-called Savamala incident, demonstrated that the police, prosecution, both state and Belgrade city authorities, including the media with national coverage, can all be effectively silenced or counted upon not to act when needed, contrary to the law and despite the best public interest.

If any of the areas covered by this study is to be observed separately, the progress achieved differs. For instance, when it comes to handling the migration-refugee crisis, the actions of Serbian authorities are highly commendable. This is despite the fact that the legal alignment in this area is not taking place as envisaged by the relevant Action Plan due to the ongoing crisis. In some other areas there has only been stagnation, as is the case with elections where OSCE/ODIHR recommendations from 2014 can still be taken and prescribed almost verbatim after the 2016 elections. Finally, there are areas where serious backsliding is evident, as is the case with the external oversight of the security sector.

However, despite the patchy track record, the overall conclusions of the study are that the progress in crucial areas is not sufficient and that more credible efforts are required. What Serbia had so far was mostly mimicry of reforms that were implemented under the mantra of the EU accession process. For these to be sustainable and impactful, the Government must focus on the basics, namely on strengthening institutions and showing full respect to the rule of law principles.

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[2] Compare: "The Rule of Law Index 2016 Report" (Washington: The World Justice Project, 2016), http://worldjusticeproject.org/sites/default/files/media/wjp_rule_of_law_index_2016.pdf; "The Rule of Law Index 2015 Report" (Washington: The World Justice Project, 2015), http://worldjusticeproject.org/publication/rule-law-index-reports/rule-law-index-2015-report.

[3] "Serbia : Europe Still Far Away," RSF, accessed November 1, 2016, https://rsf.org/en/serbia.

1. ELECTIONS:

Old Problems Appear Anew

There have been irregularities with the organisation of elections, which raise concerns regarding basic principles of freedom and fairness. Old problems concerning the legislative framework and implementation on the ground remain still relevant.

Early parliamentary elections in Serbia, concurrent with the provincial elections in Vojvodina and several municipal elections, took place on 24 April 2016. The coalition gathered around the incumbent Prime Minister's party won by a landslide (48.25% of the votes).[4] In addition, it won the provincial elections and obtained majority in most of the municipalities. Apart from the fact that there were no obvious reasons for organising early elections given that the Government had stable parliamentary support, the election campaign and handling of the elections themselves were marred by a number of problems. What is even more disconcerting is the fact that OSCE/ODIHR monitoring mission had identified a number of identical shortcomings on the occasion of previous early elections organised in March 2014 and that little has been done to improve on them.[5] The OSCE/ODIHR mission found that *"[a]lthough fundamental freedoms were respected, biased media coverage, undue advantage of incumbency and a blurring of distinction between state and party activities unlevelled the playing field for contestants."*[6]

To illustrate the previous point, it is worth taking a look at the media coverage during the election campaign. The Bureau for Social Research conducted monitoring of all national television stations, and, regarding the incumbent Prime Minister, found that: "[m]ultiple daily appearances on TV screens have made Vučić an unparalleled sovereign of media space,"[7] as no other person before him since the establishment of the multi-party system in Serbia. When it comes to blurring the line between the state and party activities, Vučić mostly appeared as the Prime Minister in technical capacity (20.4%), as the leader of the Serbian Progressive Party (6.6%), and finally as the leader of the electoral list Serbia is Winning (5.8%). These numbers combined represent 32.8% of the total airtime devoted to the elections on televisions with national coverage.[8] In addition, when it comes to the tone in which the candidates were presented, 90.9% of the reports featuring the Prime Minister did so in a positive manner.[9]

The new parliamentary convocation, despite the fact that it remains predominantly pro-European, now better represents a wide spectrum of different political beliefs and opinions held by the citizens, as it now includes Eurosceptic parties as well as those that are exclusively anti-European. The former ones include the DSS-Dveri coalition, which managed to reach the 5% threshold only after the elections were repeated at several polling stations as a result of reported irregularities.[10]

In addition, the Citizens on the Watch observation mission identified a number of irregularities, including: the forgeries of supporting signatures for seven out of 29 electoral lists; serious omissions and irregularities registered at 4% of the polling stations; and controversies around the voter registration. Although these were not present to the extent that could seriously affect the outcome of the elections, a peculiar case where the coalition DSS-Dveri missed the electoral threshold by just one vote before the repeated elections meant that these irregularities could significantly alter the composition of the parliament.[11]

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[4] "Rezultati izbora za narodne poslanike Narodne Skupštine Republike Srbije održanih 24. aprila i 4. maja 2016. godine" (Belgrade: Republic Electoral Commission (REC), May 2016), http://www.rik.parlament.gov.rs/izbori-za-narodne-poslanike-2016-rezultati.php.

[5] Compare: "Serbia, Early Parliamentary Elections, 16 March 2014: OSCE/ODIHR Limited Election Observation Mission Final Report" (Warsaw: OSCE, May 22, 2014), http://www.osce.org/odihr/elections/serbia/118968; "Serbia, Early Parliamentary Elections, 24 April 2016: OSCE/ODIHR Limited Election Observation Mission Final Report" (Warsaw: OSCE, July 29, 2016), http://www.osce.org/odihr/elections/serbia/256926.

[6] "Republic of Serbia — Early Parliamentary Elections, 24 April 2016: Statement of Preliminary Findings and Conclusions" (Belgrade: OSCE, April 24, 2016), 1, http://www.osce.org/odihr/elections/serbia/235936.

[7] Dražen Pavlica, "National Television Station - Structure of Actors and Tone of Coverage," in Media and Elections 2016, by Zoran Gavrilovic Zorica Miladinovic, and Dražen Pavlica (Belgrade: BIRODI, 2016), 3, http://www.birodi.rs/mediji-i-izbori-2016/.

[8] Ibid., 5.

[9] Ibid., 8.

[10] CRTA, "Review of Election Campaign 2016 by Istinomer" (Belgrade: Centre for Research, Transparency and Accountability (CRTA), October 12, 2016), 4–5, http://crta.rs/wp-content/uploads/2016/10/REVIEW-OF-ELECTION-CAMPAIGN-2016-BY-ISTINOMER-1.pdf.

[11] CRTA, "Executive Summary Report: Early Parliamentary Elections 2016" (Belgrade: Centre for Research, Transparency and Accountability (CRTA), October 15, 2016), 4–6, http://crta.rs/wp-content/uploads/2016/10/Executive-Summary-1.pdf.

The OSCE/ODIHR observation mission assessed that the election administration performed its tasks efficiently, but that post-election developments raised serious concerns. One issue stems from the fact that the Republic Electoral Commission (REC) cannon act *ex officio* upon irregularities but can only do so after complaints are submitted, which may leave some of the irregularities unaddressed.[12] When it comes to the irregularities observed, the Citizens on the Watch reported attempts of taking photos of the ballots, campaigning within 50m of the polling stations, as well as multiple voting and voting despite failure to present a valid ID. The most peculiar incidents involve the so-called Bulgarian Train attempts to secure votes, which involve *"coordinated activities of political party activists and members of election committees by the polling stations, comparing the voters' lists in an attempt to confirm whether their 'safe voters' had indeed voted."*[13]

2.PARLIAMENT:

A Rubber-Stamping Legislature

The Parliament continues to adopt laws by urgent procedure, although the legislative agenda was significantly reduced due to early elections. The new assembly includes an increased number of opposition parties that have managed to pass the electoral threshold of 5%. Although it was expected that the increased pluralism among the MPs would contribute to a lively parliamentary debate and enhance the Parliament's oversight functions, this was not the case due to frequent obstructions and abuse of the majority party and its coalition partners (to illustrate the case in point, see the section on civilian oversight of the security forces).

The most serious concern is the situation where the Parliament's functions are being increasingly reduced to rubber-stamping and acclamation of the executive branch of the Government. The institute of parliamentary questions for holding the Government accountable is not often used. The Parliamentary Rules of Procedure stipulate that this instrument can be used on the last Thursday of every month, but only during a regular parliamentary term and if a session is scheduled to take place on that day. This provision allows for the Chairman of the National Assembly to effectively provide a safe haven for the Government from being questioned by the MPs by simply not scheduling a session on the last Thursday of each month. This practice has been applied over the previous years and still remains to be addressed.[14] For instance, in the current parliamentary convocation the Parliament questioned the Government only once, whereas in the previous one, April 2014-March 2016, three questionings took place, two of which in early 2014. It is also interesting that in the IX parliamentary convocation, May 2012-April 2014, sessions for parliamentary questions took place almost every month. In addition, over the last three years parliamentary sessions frequently took place on the last Wednesday or Friday of each month, which might point to the fact that there is a deliberate intent to prevent the Parliament from exercising its control function over the executive by exploiting the Rules of Procedure and avoiding to schedule sessions on the last Thursday of each month.

One of the possible solutions to the problem described above is to file a motion for interpellation, namely to summon a representative of the Government to answer to the Parliament. This motion requires a coordination of 50 MPs, yet this instrument has not been used by the opposition parties due to mutual disagreements and despite frequent complaints that the ruling majority abuses its position to prevent any meaningful debate from taking place.

An unprecedented incident that was brought to light by an MP from the opposition party, Enough is Enough, can be used to illustrate the erosion of the Parliament's control function and its reduction to a rubber-stamping legislature that acts as a voting machine. Namely, on the occasion of a parliamentary session where the MPs voted for the appointment of the members of the Regulatory Authority for Electronic Media, Chairwoman of the National Assembly from the Serbian Progressive Party, Maja Gojkovic, rang the electronic bell to indicate to the MPs from her party for which candidate to vote.[15]

[12] "Serbia, Early Parliamentary Elections, 24 April 2016: OSCE/ODIHR Limited Election Observation Mission Final Report," 19.

[13] CRTA, "Preliminary Report on the Election Day Observation" (Belgrade: Centre for Research, Transparency and Accountability (CRTA), September 15, 2016), 10, http://crta.rs/wp-content/uploads/2016/09/PRELIMINARY-REPORT-ON-THE-ELECTION-DAY-OBSERVATION-1.pdf.

[14] Vladimir Erceg, "Parliamentary Questions as a Mechanism for Oversight of the Security Sector" (Belgrade: Belgrade Centre for Security Policy, 2014), 10–11, http://www.bezbednost.org/upload/document/parliamentary_questions.pdf.

[15] "U Skupštini ne sede ovce, ne treba im zvonce | Dosta je bilo," Dosta Je Bilo, October 14, 2016, http://dostajebilo.rs/u-skupstini-ne-sede-ovce-ne-treba-im-zvonce/?lang=lat.

As far as transparency is concerned, the situation has improved when compared to that of 2015, taking into account that the Parliament has published Budgets for two previous years and a detailed procurement plan.[16] However, the Parliament does not have a sufficiently developed calendar of legislative activity, or the agenda, as these are primarily influenced by the executive. This situation makes it impossible for the stakeholders outside of the decision making structures to influence the policy making process in a timely manner.

Parliamentary committees remain inefficient in performing their oversight functions, especially those in charge of the security sector, with MPs from the ruling coalition presiding over them. Relations to the Ombudsman and other independent state institutions remain problematic, with frequent attacks *ad hominem* by the MP of the ruling party.

3.GOVERNANCE:

Commitment to Europe at a Declaratory Level

Some progress was made in regard to the technical aspects of the accession process, although most reforms relevant to the rule of law stagnated due to early elections. The EU accession however, at least at a declaratory level, still remains a priority on the newly elected Government's agenda. Despite this, many planned activities within Chapters 23 and 24 related to reforms were postponed or delayed because of early elections. The Negotiating Team is fully staffed as of September 2015 and has been functioning from then on.

The line Ministries drafted and amended the Action Plans for Chapters 23 and 24 over the course of the period, and the Government adopted them while acting in the technical capacity, which speaks in favour of their devotion to the EU accession process. Civil society organisations (CSOs) gathered around the National Convention on the EU (NCEU) actively participated in the process. In addition, the Negotiating Positions for two said Chapters were drafted in March 2016 and the CSOs were consulted by the Parliamentary Committee on the European Integration after the summaries of these documents had previously been disclosed to them. Despite the fact that the technical aspects of the consultation process were fully respected, civil society was limited in regards to the impact they were able to achieve. For instance, CSOs submitted a position paper and presented it to the Parliamentary Committee on EI on May 12, stating their opinions and comments on the proposed draft Negotiating Position for Chapter 24 and the Action Plan for Chapter 24.[17] However, at the session organised on the following day, the Committee refused to adopt any conclusions regarding the submitted comments, thus rendering the CSOs contribution a pro forma process.[18]

There were personnel changes in the Ministry of Interior (MoI) at the level of State Secretary previously engaged in coordinating Chapter 24 related reforms, resulting in an unclear structure of the Negotiating Group within the Ministry. The Ministry of Justice (MoJ) published two quarterly reports on the implementation of AP 23[19] whereas, due to different reporting dynamics, the first MoI's report is forthcoming in the 6th month following the opening of negotiations on Chapter 24.

Although all-out attacks on the Ombudsman by the Government representatives have ceased, these were taken over by the MPs of the ruling party and media close to the Government, trying to politicise the Ombudsman in the public and present him as a candidate for the upcoming presidential elections, with the view to discredit both the institution and the Ombudsman personally.

[16] CRTA, "Index of Parliamentary Openness: Serbia and Region 2016" (Belgrade: Centre for Research, Transparency and Accountability (CRTA), September 12, 2016), 26, http://crta.rs/wp-content/uploads/2016/09/PARLIAMENTARYOPENNESSINDEX-1.pdf.

[17] The position paper is available here: "Annual Report of the Working Group for Freedom, Justice and Security (Chapter 24) of the National Convention on the EU" (Belgrade: Belgrade Centre for Security Policy, May 2016), 30–37, http://bezbednost.org/upload/document/annual_report_of_the_working_group_for_chapter_24_.pdf.

[18] "The Negotiating Position for Chapter 24 Needs Improvement," Belgrade Centre for Security Policy, May 13, 2016, http://www.bezbednost.org/BCSP/6231/The-negotiating-position-for-Chapter-24-needs-improvement.shtml.

[19] These are: "First Report on Implementation of the Action Plan for Chapter 23 (for Activities Due II Quarter of 2016)" (Belgrade: Council for the Implementation of the Action Plan for Chapter 23, July 2016), http://www.mpravde.gov.rs/files/Report%20no.%201-2-2016%20on%20Implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf; "Report 3/2016 on Implementation of the Action Plan for Chapter 23" (Belgrade: Council for the Implementation of the Action Plan for Chapter 23, October 2016), http://www.mpravde.gov.rs/files/Report%20No%20%203-2016%20on%20implementation%20of%20Action%20plan%20for%20Chapter%2023.pdf.

4.CIVIL SOCIETY:

From Cooperation to Securitisation

Progress in the area of cooperation with civil society is, at best, ambiguous. Whereas cooperation and consultations take place at the professional and technical levels, the environment in which civil society organisations operate is becoming increasingly hostile.

The NCEU continues to be a platform for CSO-Government consultations pertaining to the accession process. Regular meetings have been organised between the Working Groups for Chapters 23 and 24 and the Government's Negotiating Groups for these two chapters, structured along the division of the acquis communautaire.[20] The Chief Negotiator for Serbia is also highly supportive of this mechanism and regularly attends the meetings.

However, practices vary across the board with different line Ministries being more or less open to the dialogue and transparent to a greater or lesser extent. For instance, the MoJ has a separate section on its website where all of the documents related to the accession process and consultations with the civil society are available, properly dated and thematically structured, both in Serbian and English language.[21] On the other hand, the MoI only has the Screening Report and the Action Plan for Chapter 24 published on their website, the former only in Serbian and the latter only in English. On other hand, the MoI was much more diligent during the process of consultations with CSOs, where a much more substantial debate was able to take place owing to the fact that the MoI team had coordinators of all 10 policy areas present at all meetings, in addition to the President and Secretary of the Negotiating Group for Chapter 24.

However, at the national level, CSOs critical of the government are still subject to attacks of the pro-government media and Government representatives. The situation worsened in the reported period, with a series of articles published with the intention to present CSOs as foreign mercenaries (with the amounts of donations disclosed as well) and traitors to the national cause. A series of allegedly investigative stories ran in daily 'Politika', publically shaming certain NGOs and marking them as profit-oriented traitors working for foreign interests and paid by foreign embassies and the EU to work against the national interests. Other pro-Government media also utilised the same practices. This was especially serious in the cases of three investigative journalism organisations (BIRN, CINS, KRIK), as well as the 'Ne davimo Beograd' initiative, which organised several protests directed against the Belgrade Waterfront, a flagship urban development project of the ruling party.

CSOs continue to contribute to the accession process within the existing mechanisms and legal framework. However, this needs to be of the proper scope and level corresponding to the vast number of legislative and strategic documents that need to be adopted during the accession process. The environment in which CSOs operate has regressed, as evidenced by the facts presented above. To illustrate the state of play one must mention the tedious and laborious process of the adoption of the Strategy for Creating Enabling Environment for CSOs for 2015-2019, which is now one year behind the schedule, although consultation and drafting was initiated in February 2014.[22]

[20] For the full overview of the NCEU's activities, see: Knjiga preporuka Nacionalnog konventa o Evropskoj uniji 2015/2016 (Belgrade: European Movement in Serbia, 2016).
[21] See: http://www.mpravde.gov.rs/tekst/2986/pregovori-sa-eu.php
[22] See: http://strategija.civilnodrustvo.gov.rs/en/

5. CIVILIAN OVERSIGHT OF THE SECURITY FORCES:

Who Watches the Watchmen?

There has been significant backsliding in the democratic governance and oversight of the security sector. This is evident in particular in regard to the oversight conducted by independent state institutions, primarily the Ombudsman, whose recommendations have been increasingly ignored by the executive.

The prominent example is the Ombudsman's investigation of the Police activities in the case of the so-called Savamala incident. The incident occurred on the very election night, 24/25 April 2016, when a group of approximately 30 masked men managed to completely block Hercegovačka Street in downtown Belgrade, extra-judicially detain several passers-by while demolishing private property with bulldozers, and then disappear into the night.[23] Despite the fact that citizens reported these events, the police refused to answer the calls and intervene. The Ombudsman, in the control procedure of police regarding the incident, established that what actually happened was an act of organised infringement on the citizen's rights, coordinated between a number of state and non-state actors.[24] Regardless, there was and still is a noticeable absence of reactions on the part of the executive, legislative and judiciary. In this manner, independent state institutions are hindered in effectively performing their control function of the security sector. Representatives of the Government and the City of Belgrade tried to dismiss the incident as unimportant and silence the criticism, at the same time refusing any responsibility. Despite the fact that the incident of such a scale and scope could not go unnoticed and without plenty of evidence,[25] the prosecution is still in the initial phase and the investigation is not yet officially open.

Apart from the Ombudsman's oversight, reaction to this incident was also present in the National Assembly as the opposition parties attempted to set up an investigative committee to examine the case. However, their attempts to include this motion in the parliamentary agenda have been repeatedly overturned by the MPs of the ruling coalition. This case also points to a major problem concerning the effectiveness of parliamentary oversight: the fact that the parliamentary Rules of Procedure do not define the requirements for establishing investigative committees. This also prevented several other attempts, in the recent years, to subject documented failures in the security sector to proper parliamentary scrutiny.

Moreover, there is no progress regarding parliamentary oversight of the intelligence services, as the Parliamentary Committee in charge failed to regularly scrutinise reports submitted by intelligence agencies. The parliamentary majority continues to obstruct oversight activities, as initiatives for investigating the cases of misconduct in the security sector are regularly proposed by the opposition MPs and also regularly rejected by the majority.[26] Moreover, nothing was done to clearly delineate the mandates of intelligence agencies where, for example, Security Intelligence Agency (BIA) plays the leading role in fighting organised crime, thus convoluting the division between intelligence and policing powers. Finally, no progress has been made in the process of aligning with the EC recommendation from the Screening Report for Chapter 24 to cease with the practice of police having to rely on BIA for the implementation of special investigative measures.[27]

[23] See: Marija Ignatijevic, "The Collapse of the Rule of Law in Serbia: The 'Savamala' Case," POINTPULSE, accessed October 13, 2016, http://pointpulse.net/magazine/collapse-rule-law-serbia-savamala-case/.

[24] See: "Findings and Recommendation of Ombudsman regarding the Savamala Incident" (Belgrade: Ombudsman, September 5, 2016), http://www.zastitnik.rs/attachments/article/4723/savamala.pdf.

[25] Among other things, there exist video recordings of the incident.

[26] "Coalition prEUgovor Report on Progress of Serbia in Chapters 23 and 24 - October 2016" (Belgrade: Group 484, October 2016), 8–10, http://preugovor.org/upload/document/preugovor___report_on_progress_of_serbia_in_chapter.pdf.

[27] "Screening Report Serbia: Chapter 24 – Justice, Freedom and Security" (Brussels, Belgium: European Commission, May 15, 2014), 28, http://ec.europa.eu/enlargement/pdf/key_documents/2014/140729-screening-report-chapter-24-serbia.pdf.

6. PUBLIC ADMINISTRATION REFORM

Taking a Break from Reforms

Some progress was made in the area of public administration reform, although no improvement is noticeable in the most important areas. Public administration remains an area where excessive political influence is hindering effective reforms, particularly in relation to professionalisation and better access to services for citizens. Depoliticisation of public administration is further exacerbated by the fact that the lines between professional civil servants and political appointees are blurred by excessive reliance on using acting officials instead of those in full capacity, which is then abused to fill senior positions on a semi-permanent basis.[28]

Much of the findings from the 2015 SIGMA Report on Serbia still remain relevant, namely that *"the legal framework for a functioning public administration is in place in Serbia, but the lack of effective institutional structures and inter-institutional co-operation hinders implementation of the legislation."*[29] Some positive developments for the citizens were noted, most prominently in regards to the simplified procedures and reduced documentation required to be submitted when communicating with public administration. In addition, public administration reform was promoted in the public and communicated to the citizens, including by launching a website Dobra uprava (Good Governance).[30]

The Public Administration Reform Strategy and the corresponding Action Plan exist, yet they are not implemented accordingly. For instance, in the first half of 2016 only 28% of activities were implemented fully, compared to 41% partially fulfilled and 31% not implemented ones.[31] Moreover, a number of activities has been transferred from 2015 and then not implemented in the first half of 2016 either, or the deadline for their implementation was prolonged by other strategic documents. It is especially worrisome that the priority area of streamlining the policy making process with the view to developing planning and monitoring system, as identified by the EC, had missed target deadlines or had partially implemented most of the corresponding activities.[32] The same goes for the establishment of e-governance, where the deadlines set by the Action Plan for some of the measures had expired almost two years ago. [33] At the same time, this area of the Action Plan, dealing with the improvement of organisational and functional sub-systems of public administration, had the highest rate of implementation. In addition, this is a worse record than that of 2015, where the ratio of implemented activities was higher and that of partially implemented was lower than in the first half of 2016.[34] Finally, the single worst performer was the Ministry of Public Administration and Local Self-Government, which was the institution responsible for the largest share of all planned activities. Despite the performance that can, at best, be described as sub-par, the newly elected Minister of Public Administration and Local Self-Government, Ana Brnabić, made a statement in early September 2016 that, because of good results achieved in the previous year, there is no further pressure in the upcoming period to rationalise the public administration and that the Government will "take a break" in regard to this issue.[35]

However, there exist no relevant figures or analyses that support the Minister's claims. The specific goal from the Strategy of establishing a merit-based system of promotion and recruitment is the single worst area when measured by performance, where 2/3 of the measures envisaged were not taken at all.[36] The restructuring and rationalisation of

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[28] "Baseline Measurement Report: The Ten Principles of Public Administration - Serbia" (Paris: OECD/SIGMA, April 2015), 45, http://www.sigmaweb.org/publications/Baseline-Measurement-2015-Serbia.pdf.

[29] Ibid., 4.

[30] Website address: http://dobrauprava.rs/

[31] "Šestomesečni izveštaj za prvu polovinu 2016. godine o implementaciji Akcionog plana za sprovođenje Strategije reforme javne uprave u Republici Srbiji za period 2015-2017." (Belgrade: Ministry of Public Administration and local Self-Government, July 2016), 10, http://www.mduls.gov.rs/doc/SemiAnnual_AP_16.pdf.

[32] Ibid., 43–56.

[33] Ibid., 57–59.

[34] "Godišnji izveštaj za 2015. godinu o implementaciji Akcionog plana za sprovođenje Strategije reforme javne uprave u Republici Srbiji za period 2015-2017." (Belgrade: Ministry of Public Administration and local Self-Government, February 2016), 10, http://www.mduls.gov.rs/doc/Annual_AP_15_usvojen.pdf.

[35] BETA, "Ana Brnabid: Predah od racionalizacije državne uprave," N1 Srbija, September 2, 2016, http://rs.n1info.com/a190127/Vesti/Vesti/Ana-Brnabic-Predah-od-racionalizacije-drzavne-uprave.html.

[36] "Šestomesečni izveštaj za prvu polovinu 2016. godine o implementaciji Akcionog plana za sprovođenje Strategije reforme javne uprave u Republici Srbiji za period 2015-2017.," 13.

public enterprises has not even begun due to heavy resistance from within. In addition, despite the existence of the relevant framework, including the Law on Determining the Maximum Number of Employees in the Public Sector,[37] limited results have been achieved. Layoffs were not performed in line with the conducted assessments; the Government rather relied on the negative difference between the natural outflow of employees due to retirement and the forbidden recruitment of new ones, in line with the Government's decision from December 2013. This might potentially lead to huge deficiencies in expertise and skills as in the case of those working in the field of medicine where education and specialisation take years.

When it comes to the EC's recommendation to streamline the responsibilities of institutions in charge of policy making, coordination, planning and monitoring, the progress remained sporadic. Despite the fact that the Republic Secretariat for Public Policy was established in 2014, its place in the policy making process still remains insufficiently developed and it lacks resources. The performance audit, a concept introduced in Serbia fairly recently, still lacks systemic approach to policy evaluation which is often done on an ad hoc basis. Independent analyses show that "*poor experience coupled with legalistic administration cultures limited the potential of performance audit to make a positive change,*" and there is little evidence to support the claim that performance audit and policy evaluation are closely connected processes.[38]

There was progress in implementing a comprehensive, multi-annual public financial management reform, and Serbia was rated favourably by the World Bank and International Monetary Fund when it comes to keeping the budget deficit under control. However, effective planning, execution and control of governmental spending still remain troublesome. To illustrate this point, the fact that the Balance Sheet of the execution of the Budget of the Republic of Serbia was last adopted by the Parliament in 2002 speaks volumes about the scope of this problem.

7. FUNCTIONING OF THE JUDICIARY

Autonomous yet not Independent

Some progress has been made in the reform of the judiciary. The case backlog has been further reduced (now standing at 2,9M cases), mostly as a result of improvements in the efficiency after the Supreme Court of Cassation adopted the Programme for solving the backlog of old cases with progress envisaged on a monthly basis.[39]

The Law on the Protection of the Right to Trial within a Reasonable Time[40] was enacted, although it does not comprehensively address the key causes of the current state of play. In line with the EC recommendation from Ch 23 Screening Report pertaining to the protection of presumption of innocence,[41] the Government adopted a Conclusion regulating the procedure of commenting on judicial trials and judgements.[42] However, the practice of accusations and "trials" in and by the media and government officials is still present. There have been some documented cases of direct pressure on judges.[43] In December 2015, amendments to the Law on the High Judicial Council[44] and the Law on the State Prosecutorial Council[45] were adopted.

The prosecutors are autonomous yet not independent, and they work under excessive influence of the executive. When it comes to the method of election and its internal organisation "*the prosecution depends on the executive power and declarative autonomy of prosecutors does not provide sufficient guarantees either to prosecutors or to defendants.*"[46] The adversarial system of prosecution was introduced in 2013 abruptly and without proper planning,

[37] „Official Gazette of the Republic of Serbia" no. 68/2015 and 81/2016 – Constitutional Court Decision)
[38] "Improving Public Administration Performance in WB: An Achievable Goal" (Belgrade: European Policy Centre, October 2015), 1, http://ten.europeanpolicy.org/images/rrpp_ten_project/final_policy_brief_eng.pdf.
Centre, October 2015), 1, http://ten.europeanpolicy.org/images/rrpp_ten_project/final_policy_brief_eng.pdf.
[39] "The Report on the Current State in the Judiciary" (Belgrade: Anti-Corruption Council, March 23, 2016), 21, http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/izvestaji/REPORT%20ON%20THE%20CURRENT%20STATE%20IN%20THE%20JUDICIARY.pdf.
[40] "Official Gazette of the Republic of Serbia" no. 40/2015.
[41] "Screening Report Serbia: Chapter 23 – Judiciary and Fundamental Rights" (Brussels, Belgium: European Commission, May 15, 2014), 24, http://ec.europa.eu/enlargement/pdf/key_documents/2014/140729-screening-report-chapter-23-serbia.pdf.
[42] "Official Gazette of the Republic of Serbia" no. 6/2016
[43] See the case of Judge Vučinid: "The Report on the Current State in the Judiciary," 15–16.
[44] "Official Gazette of the Republic of Serbia" no. 105/2015
[45] Ibid.
[46] "The Report on the Current State in the Judiciary," 7.

which set in motion a range of problems that are evident today. Apart from the most urgent issue of the prosecutors' career advancement and elections being directly dependant on the party politics dynamic, others include lack of capacities, insufficient resources and troubled cooperation with the police. No analyses have been produced on the effects of this transition, although the prosecution is considered to be the weakest link in the system.

When it comes to the election of prosecutors and judges, political pressure is still evident. In December 2015 a new chief Prosecutor for Organised Crime was elected by a majority of parliamentary votes, despite the fact that several watch-dog organisations and independent experts identified a number of deficiencies in the process, including potential fraudulent testing of candidates.[47] Moreover, the then Minister of Justice, Nikola Selakovic, made a statement regarding the list of candidates for the prosecutor's office which implicitly admitted political meddling in the process of elections: "I would be a complete political masochist if the people on the list were completely opposed to the government... but that does not change the fact they are the best candidates."[48]

The constitutional reform is pending as part of Chapter 23 reforms envisaged by the Action Plan for this chapter, planned for 2017 and aiming to grant independence and protect the elections of judges and prosecutors from political influence. So far, the analysis of provisions of the Constitution and the proposing of amendments to the Constitution taking into account the opinion of Venice Commission and European standards has been conducted.[49] However, this document is not publicly available and its contents cannot be independently verified, and the entire process of constitutional reform has so far been conducted in a clandestine manner.

After several years of consultations and a prolonged drafting process, a Draft Law on Free Legal Aid has been produced and is expected to be enacted by the end of 2016.[50] Compared to the previously drafted versions, the current one expands the potential base of beneficiaries to include individuals other than those who are recipients of welfare assistance. However, the list of those able to provide free legal aid has been unjustly reduced so as to, for example, exclude legal clinics. Moreover, the Draft Law does not envisage free legal aid to be provided in civil law cases. The reason provided to support these provisions was that the Government, in the current economic and fiscal situation, could not provide sufficient resources to allow for more inclusive provisions.

8. FIGHT AGAINST CORRUPTION: the Gap between Reality and Expectations

There has been some progress in the fight against corruption. However, it falls short of the proclaimed goals of the Government where this issue is placed among the top priorities, as well as of the National Anti-Corruption Strategy goals and, finally, the priorities as set by the EC in the 2015 Country Report for Serbia. More precisely, if we look at the four priorities identified by the EC recommendations,[51] Serbia did not achieve noticeable progress in any of them.

First, no evident track record of investigations, indictments and final convictions in high-level corruption cases has been established.

Second, the implementation and monitoring of anti-corruption policies, primarily the National Anti-Corruption Strategy and the Action Plan (both amended in July 2016), is convoluted by the threefold mechanism of oversight and coordination.[52] Namely, the Anti-Corruption Agency of Serbia (ACAS), the Group for Coordination of Implementation of the Anti-Corruption Strategy and the newly established Government's Coordination Body for Implementation of the

[47] For instance, see: Saša Dragojlo, "Trials Await Serbia's New Organized Crime Prosecutor," Balkan Insight, December 23, 2015, http://www.balkaninsight.com/en/article/trials-await-serbia-s-new-organised-crime-prosecutor-12-22-2015.

[48] Saša Dragojlo, "Serbian MPs Quarrel Over New Prosecutors," Balkan Insight, December 22, 2015, http://www.balkaninsight.com/en/article/serbia-elected-new-organized-crime-prosecutor-12-22-2015.

[49] "Report 3/2016 on Implementation of the Action Plan for Chapter 23," 4.

[50] See (in Serbian only): http://www.paragraf.rs/nacrti_i_predlozi/210916-nacrt_zakona_o_besplatnoj_pravnoj_pomoci.html

[51] These are: establish track record of tackling high-level corruption cases; coordination and monitoring of the implementation of the Anti-Corruption Strategy; amending the economic and corruption crimes section of the Criminal Code; and adopt a new Law on the Anti-Corruption Agency. See: "Serbia 2015 Report" (Brussels, Belgium: European Commission, November 10, 2015), 13, http://ec.europa.eu/enlargement/pdf/key_documents/2015/20151110_report_serbia.pdf.

[52] "Coalition prEUgovor Report on Progress of Serbia in Chapters 23 and 24 - November 2015" (Belgrade: Belgrade Centre for Security Policy, November 2015), 27, http://preugovor.org/upload/document/preugovor_report_november_2015.pdf.

Action Plan are all tasked with similar jobs which overlap and conflict to a great extent. It does not come as a surprise that the track record of the implementation of the Strategy and the Action Plan is unsatisfactory. For instance, out of 640 activities envisaged by the AP in 2015, the ACAS monitored only two-third of them (422), and found that 63% were not implemented in line with the proposed indicators and that only 1/5 was implemented as originally planned.[53] Moreover, independent monitoring report on the implementation of the Anti-Corruption Strategy, focusing on police as one of the areas that are particularly vulnerable to corruption,[54] finds that only three out of 29 envisaged activities directed at the police were implemented accordingly, whereas 90% of the activities were lagging behind the proposed timeframe.[55] It is highly unlikely that these unfavourable statistical data will see any improvement in 2016, if the early elections and delays with the forming of the new Government are taken into account.

Third, the proposed amending of the Criminal Code regarding the section on economic and corruption crimes (in particular Article 234 on the abuse of position by responsible official) did not take place in the reported period despite the fact that two other proposals for amending said law are currently in parliamentary procedure. In addition, despite frequent announcements that illicit enrichment would be classified as a criminal act and as such sanctioned under the Criminal Code, this yet remains to be seen.

Finally, the adoption of the new Law on Anti-Corruption Agency of Serbia (ACAS) has been postponed several times, while the Draft is currently subjected to public consultations that will last until 15 November 2016. The Action Plan for Chapter 24, as the supreme document that overrides other strategic documents in case of conflicts (including the Strategy) sets the deadline for the third quarter of 2016, which has already expired. Although the ACAS produced a model of the new Law and the working group for drafting began to work in March 2015,[56] there were disagreements over the direction of the needed reforms. Members of the working group stated that there were fundamental disagreements over the Ministry of Justice's desire to further limit the independence of the Agency and assure that it could be controlled through political pressure, while at the same time blaming the Agency for attempting to excessively expand its authority and powers.[57] However, the Draft Law contains some significant improvements, one of them regarding prevention and sanctioning of conflict of interest. Namely, in addition to making a clearer distinction between accumulation of public functions and conflict of interest, it also specifies clear deadlines for processing asset declarations and other competences that fall under ACAS's remit.[58]

The early elections were a major topic throughout 2016, although fight against corruption was conspicuously out of the focus of the election campaign, especially when compared to the previous election cycles. However, the Anti-Corruption Action Plan for the implementation of the National Anti-Corruption Strategy for 2013-2018 was amended in July 2016, despite the fact that the incumbent Government acted in technical capacity.

[53] "The Implementation of the National Anti-Corruption Strategy and the Action Plan (for 2015) – Introduction and General Part" (Anti-Corruption Agency of Serbia, Macrh 2016), 19, http://www.acas.rs/wp-content/uploads/2014/09/Report-on-the-Implementation-2016.pdf.

[54] "Screening Report Serbia: Chapter 23 – Judiciary and Fundamental Rights," 31.

[55] Marina Matic et al., "Procena realizacije Akcionog plana za sprovođenje Nacionalne strategije za borbu protiv korupcije u Republici Srbiji za period od 2013. do 2018. godine za oblasti: „Pravosuđe , „Policija , „Prevencija korupcije „Sprovođenje i nadzor nad sprovođenjem Strategije i „Preporuke od 6. decembra 2014. do 26. januara 2016. godine." (Belgrade: Belgrade Centre for Security Policy, February 2016), 25–26, http://www.acas.rs/wp-content/uploads/2016/02/Drugi-alternativni-izve%C5%A1taj-o-sprovodjenju-antikorupcijske-strategije-BCBP-2015.pdf.

[56] "Coalition prEUgovor Report on Progress of Serbia in Chapters 23 and 24 - November 2015," 18.

[57] "Ko se zalaže za manju nezavisnost Agencije za borbu protiv korupcije," accessed October 21, 2016, http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/7644-ko-se-zalaze-za-manju-nezavisnost-agencije-za-borbu-protiv-korupcije.

[58] Nemanja Nenadic, Sofija Mandic, and Miroslav Milosavljevic, "Pradenje napretka u oblasti sprečavanja I rešavanja sukoba javnog i privatnog interesa" (Belgrade: Coalition prEUgovor, October 2016), 8–9.

9. FIGHT AGAINST ORGANISED CRIME:

Organised Media Spectacle

Serbia made limited progress in fighting organised crime. To efficiently tackle organised crime, the law enforcement agencies need to enhance their analytical capacities, improve inter-institutional cooperation and, most importantly, prove a positive track record in fight against organised crime in the form of final convictions. All of these three provisional indicators saw no or limited improvement in the previous year.

As far as analytical capacities of law enforcement agencies are concerned, a major milestone was reached when the first national Serious and Organised Crime Threat Assessment (SOCTA) was produced and published in December 2016, as envisaged by the Action Plan for Chapter 24.[59] This was the pinnacle of focused efforts to establish and build capacities of the Department for Operational Analytics within the MoI, which was intended to be the flagship of the now decade-long transition from reactive and repressive policing to more proactive policing based on operational data and analyses.[60] The SOCTA report aims to improve the results of police work in the fight against organised crime (effectiveness) and allow for a more prudent use of human and technical resources (efficiency). However, SOCTA remains largely useless if it does not become operationalised and applied in order to shape internal policies and work of law enforcement agencies. Little has been achieved in this regard, as SOCTA's application rests almost exclusively upon the introduction of intelligence-led policing (ILP), which is still being implemented only in two cities in Serbia through pilot-projects; and establishment of a reliable criminal-intelligence system (Ser. KOS), which is still in the nascent phase of its development and will require many more years and substantial financial support to become fully operational.[61]

At the same time, KOS is a prerequisite for an efficient and secure exchange of information between various law enforcement agencies, which is a cornerstone that would allow for their better cooperation. This exchange of information is currently marred by various non-compatible systems of data collection and formats across different institutions. For example, this situation makes it impossible to trace a single case or an act of crime across the police, prosecution and finally courts, due to different systems of classifications used. In addition, early elections from April pushed back the Parliamentary agenda and the adoption of legislation is thus lagging behind. For instance, this was the case with the Law on Organisation and Jurisdiction of State Authorities in the Fight against Organised Crime, Corruption and Other Particularly Serious Criminal Offences, originally planned for adoption by the end of 2015 and then postponed for the fourth quarter of 2016. Again, this delay will have negative effects on inter-institutional cooperation in the area of tackling organised crime.[62]

Finally, when it comes to proving a positive track record in fighting organised crime, it could be best described as a media performance or a public relations stunt. Namely, over the course of the previous year there were a number of high-profile police actions (named Cutter, Thunder, Scanner, Tsunami, etc.). All of them were characterised by: mass arrests of suspects for various and mostly unrelated types of crimes; in various cities, with good geographical representation across the country; excessive and detailed media coverage, including live footage of arrests; no organisers of crime groups were ever arrested; and finally, most of those arrested would later be released and face no criminal charges.[63]

[59] SOCTA report is available in Serbian at: http://www.mup.gov.rs/cms/resursi.nsf/SOKTA_procena_pretnji.pdf (last accessed on 5 April 2016).
[60] Interview with a former MoI employee, 16 September 2016, Belgrade.
[61] "Coalition prEUgovor Report on Progress of Serbia in Chapters 23 and 24 - May 2016" (Belgrade: Belgrade Centre for Security Policy, May 2016), 45–46, http://www.preugovor.org/Reports/1188/Coalition-prEUgovor-Report-on-Progress-of-Serbia.shtml.
[62] "Coalition prEUgovor Report on Progress of Serbia in Chapters 23 and 24 - October 2016," 48–50.
[63] See: Bojana Jovanovic, "Mete policijskih akcija sitni dileri," KRIK, September 13, 2016, https://www.krik.rs/mete-policijskih-akcija-sitni-dileri/.

10. FIGHT AGAINST TERRORISM:
Positive Policy Adjustments

In 2016 Serbia made good progress in the area of fight against terrorism. Most importantly, Serbia drafted the National Strategy and an Action Plan for Prevention and Fight against Terrorism,[64] as envisaged by the Action Plan for Chapter 24.

The Strategy is structured in line with the "prevent-protect-pursue-respond" concept of the EU's Counter-Terrorism Strategy of 2005. However, the adoption of these documents is now officially behind the schedule envisaged in the Action Plan for Chapter 24. Furthermore, the draft Strategy fails to fully acknowledge the role civil society actors can play in certain important elements of the EU's counter-terrorism policy, such as raising awareness on radicalisation and violent extremism, and the role of local communities in countering these threats. In addition, the document overtly focuses on Islamic extremism, i.e. extremism of minority groups, while failing to address other types of extremism that exist among the majority population.

The Law on International Restrictive Measures[65] was adopted in February 2016; it plays an important role in fighting terrorism by stipulating the obligation to apply restrictive measures towards states, organisations, as well as individuals, on the basis of decisions adopted by the United Nations Security Council, the OSCE, and other international organisations of which Serbia is part. On the other hand, Serbia still needs to take further action and establish a national terrorism-related database.

Moreover, no action was taken towards identifying and designating the European Critical Infrastructures (ECI) and some activities in this area were postponed until next year. Another identified problem is the understaffing of the specialised unit for combating terrorism and extremism within the MoI. Lastly, additional legislative activities are needed for further alignment with EU standards regarding chemical, biological, radiological and nuclear materials and the marketing and use of explosives precursors.

11. HUMAN RIGHTS AND THE PROTECTION OF MINORITIES:
Legislation vs. Implementation

When it comes to issues concerning human rights and the protection of minorities, the legislative framework is largely put in place and aligned with EU standards, whereas the implementation remains problematic and lacks a positive track record.

Conditions for the full exercise of freedom of expression, however, remain yet to be achieved. There has been some serious backsliding when it comes to media plurality and freedom of the press (for more details, see the following section discussing the details of the freedom of expression).

As far as promotion and protection of the rights of most vulnerable groups is concerned, the progress was sporadic. These groups include LGBTI persons, persons with disabilities, Roma people and, as of lately, victims of gender-based violence.

The Pride Parade was organised on September 18 in Belgrade, with no incidents or violent outbursts, although the attitude of the general public towards sexual minority groups leaves much to be desired. The last available research from 2014 points that the Pride Parade itself contributes to increase of fear and intolerance directed

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[64] "Draft of the National Strategy for Prevention and Fight against Terrorism" (Ministry of Interior, April 4, 2016), http://bit.ly/2dxZVzg.

[65] "Law on International Restrictive Measures" (Ministry of Foreign Affairs, February 2016), http://www.mfa.gov.rs/sr/images/documents/1614-15%20lat.pdf.

towards LGBTI population, which is an opinion shared by 42% of respondents.66 Furthermore, a more recent research from 2016 is encouraging to the extent that a large majority of the citizens reject direct, physical violence towards LGBTI persons, despite the fact that at the same time they do not perceive other forms of violence as such (demeaning insults, avoidance, discrimination in the work place, etc.).[67] The most concerning issue is that, of all the identified vulnerable minority groups, young people of high-school age show the highest level of intolerance towards LGBTI persons.[68] At the same time, the Model Law on Gender Identity has been drafted and submitted to the relevant authorities, with the view to ensure access to basic rights for transsexual individuals, such as the change of name and issuance of corresponding personal IDs, as well as prohibition of discrimination.[69] The Commissioner for the Protection of Equality shares the opinion that legal changes are necessary "in order to enable transgender (sic!) persons to fully integrate their new identity into their personal and professional life, with full respect for their privacy."[70] Finally, hate-motivated offences remain yet to be adequately addressed and a track record of final convictions needs to be achieved, despite the fact that in cases of physical violence there is no official statistical data on crimes motivated by homophobia or transphobia.[71]

Persons with disabilities remain one of the most marginalised groups in Serbian society today. Although the normative framework is satisfactory to a great extent, inaccessibility of facilities and services still remains an issue of concern. In addition, persons with disabilities submitted the third largest share of complaints to the Commissioner for the Protection of Equality (11.3% of the total number), which shows significant obstacles when it comes to exercising their rights.[72] The public consultation process for the purposes of drafting the new Strategy for the Improvement of the Conditions of Persons with Disabilities was concluded on 31 October 2016, although the impact of the previous one was limited.

For over a decade now the public authorities in Serbia have been trying to transform the medical approach to disability into a social model. As part of this struggle the National Assembly adopted the Law on the Use of Sign language in Public Institutions,[73] and the Law on the Use of Seeing-Eye Dogs,[74] as well as amendments to the Law on Banning Discrimination of Persons with Disabilities,[75] in 2015. The latter one, for instance, equals facsimile signature with handwritten signature for persons with sensory disabilities. Still, the 2016 elections show that persons with disabilities face major barriers in the election process: 60% of election polls are physically inaccessible;[76] election informative programs are not available for deaf people and people with impaired hearing; blind people and people with visual impairment are also faced the inaccessibility of facilities in election campaigns and at polling stations. Only one person with disabilities was elected to the National Assembly in 2016 elections (Ljupka Mihajlovska, from the Enough is Enough electoral list). In November 2016, the National Assembly re-established informal parliamentary caucus for improving the position of persons with disabilities which can lead to further elimination of discrimination. In 2016, the UN Committee which monitors the implementation of the UN Convention on the Rights of Persons with Disabilities published recommendations for Serbia, emphasising the need for amending the system of legal capacity deprivation and enabling people with disabilities to take part in elections and decision making.

When it comes to gender equality, in the previous year Serbia dropped two places on the World Economic Forum's Gender Equality Gap Index 2016, with a particularly troubling score in the area of political empowerment of women.[77] This aggregate index does not include the cases of femicide, which is an especially concerning area for Serbia. In the first

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[67] Marijana Stojčic and Dragana Petrovic, Homofobija i internalizovana homofobija U Srbiji (Belgrade: Centre for Queer Studies, 2016), 23, http://www.cks.org.rs/wp-content/uploads/2016/04/Homofobija-i-internalizovana-homofobija-u-Srbiji-kvalitativno-istra%C5%BEivanje.pdf.

[68] "Stavovi srednjoškolaca prema ulasku Srbije U EU" (Belgrade: Serbian European Integration Office, 2016), 4, http://www.seio.gov.rs/upload/documents/konkurs_ocd_16/Fokus%20grupe_zakljucak_final.pdf.

[69] Model Law on Gender Identity, 2015, http://www.transserbia.org/vesti/951-zasto-je-vazno-hitno-usvajanje-zakona-o-rodnom-identitetu-koji-predlaze-organizacija-gayten-lgbt.

[70] "The Commissioner for the Protection of Equality 2015 Regular Annual Report" (Belgrade: The Commissioner for the Protection of Equality, March 2016), 259, http://ravnopravnost.gov.rs/wp-content/uploads/2016/09/Commisssioner-for-the-Protection-of-Equality-2015-Regular-Annual-Report-1.pdf.

[71] Ibid., 29.

[72] Ibid., 8.

[73] "Official Gazette of the Republic of Serbia" no. 38/2015.

[74] "Official Gazette of the Republic of Serbia" no. 29/2015.

[75] "Official Gazette of the Republic of Serbia" no. 22/2006 and 13/2016.

[76] Information received from two election monitoring missions: Centre for Free Elections and Democracy (CESID) and Citizens on the watch (Centre for Research, Trasnparency and Accountability, CRTA).

[77] Compare: "The Global Gender Gap Report 2015" (World Economic Forum, 2015), http://www3.weforum.org/docs/GGGR2015/The%20Global%20Gender%20Gap%20Index%202015.pdf; "The Global Gender Gap Report 2016" (World Economic Forum, 2016), http://www3.weforum.org/docs/GGGR16/WEF_Global_Gender_Gap_Report_2016.pdf.

seven months of 2016 the number of reported femicides is 18.[78] In 2015, independent monitors confirmed that at least 35 women were killed in the domestic-partner context, including the period of 72 hours from 16 to 18 May when seven women were killed under various circumstances and which can be characterised as cases of femicide.[79] The Ombudsman initiated a control procedure regarding 14 of these cases and found that in 12 of them there were omissions and negligence on the part of relevant authorities. These include the fact that domestic violence is often not properly investigated, but is rather dismissed as a family related problem, and that cooperation between police, health and social welfare institutions often fails.[80] As a response to this problem, the Ministry of Justice is drafting the Law on Prevention of Domestic Violence, which intends to introduce emergency protective measures that could be issued by police officers on the spot with the view to limiting contact between the perpetrator and the victim.[81] In February 2016, after the completion of the public consultation phase, the Law on Gender Equality entered the parliamentary procedure for adoption, albeit under a different name: the Law on the Equality of Women and Men. After the outburst of the stakeholders involved in the process regarding the removal of any gender-related signifiers and even gender-based violence as such from the law, the Coordinating Body for Gender Equality decided to withdraw this draft from parliamentary procedure.[82]

The efforts to improve the difficult living conditions of Roma people and combat discrimination have yielded little result. The Government adopted the Strategy for Social Inclusion of Roma for 2016-2025 which, in addition to the newly established Regional Roma Office, was one of the few positive developments. However, Roma people continue to face discrimination. The UNHCR report finds that internally displaced Roma people are a particularly vulnerable group, with the unemployment rate of about 75% and with more than 90% of them living in sub-standard conditions.[83] In addition, Roma people often face inadequate access to health and education services and are subject to discriminatory treatment in the media and public discourse in general.[84] There are a number of affirmative actions directed towards Roma people that are taking place at the moment, such as preferential treatment when applying to universities; yet these actions have failed to yield many positive results as they do not address the root causes.

Regarding what became known as the Missing Babies case, it has been two years since Serbia failed to implement the verdict of the European Court for Human Rights (the case of Zorica Jovanovic vs. Serbia) regarding many reported cases of babies missing from maternity wards.

12. FREEDOM OF EXPRESSION:
Heightening of Tensions

There was evident backsliding in the area of freedom of expression in the last year. Despite the fact that a media legislative package was adopted and that privatisation of state-owned media outlets was conducted, the conditions for the full exercise of freedom of expression are not in place.

Instead of increasing the transparency of ownership and funding, local media privatisation allowed for a concentration of ownership among certain individuals affiliated with the ruling party, in some cases leading to the creation of small local media empires.[85]

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[78] "Coalition prEUgovor Report on Progress of Serbia in Chapters 23 and 24 - October 2016," 32.

[79] "Saopštenje za medije povodom početka prikupljanja potpisa podrške peticiji za proglašenje 18. maja Danom sedanja na ubijene žene žrtve nasilja - mreža Žene protiv nasilja," accessed November 1, 2016, http://www.zeneprotivnasilja.net/vesti/614-saopstenje-za-medije-povodom-pocetka-prikupljanja-potpisa-podrske-peticiji-za-proglasenje-18-maja-danom-secanja-na-ubijene-zene-zrtve-nasilja.

[80] "Četrdeset pet sistemskih preporuka Zaštitnika građana za postupanje nadležnih u slučajevima nasilja nad ženama" (Belgrade: Ombudsman, July 28, 2016), http://www.zastitnik.rs/attachments/article/4833/Sistemske%20preporuke.doc.doc.

[81] "Coalition prEUgovor Report on Progress of Serbia in Chapters 23 and 24 - October 2016," 33.

[82] Tanja Ignjatovic, "Da li nam je potreban novi loš zakon o rodnoj ravnopravnosti," in rEUformator - informator o pogavljima 23 i 24, by Bojan Elek (Belgrade Centre for Security Policy, 2016), 7–8, http://preugovor.org/upload/document/reuformator_5.pdf.

[83] Srđan Cvejic, "Procena potreba interno raseljenih Roma u Srbiji" (Belgrade: UNHCR, November 2014), 5, http://www.unhcr.rs/media/UNHCR_Brosura_RAE_IRL_Srpski.pdf.

[84] "The Commissioner for the Protection of Equality 2015 Regular Annual Report," 102–5.

[85] For instance, all local media in the city of Nis are now co-owned by the son of the former Serbian Minister of Defence, whereas in Kruševac a local member of the Socialist Party of Serbia bought eight local media outlets. See: "Fiktivna privatizacija medija U Srbiji," Istinomer, accessed October 13, 2016, http://www.istinomer.rs/clanak/1373/Fiktivna-privatizacija-medija-u-Srbiji.

Moreover, the newly introduced system of media project financing, where local authorities that were in charge of conducting public calls disproportionally favoured these newly privatised media,[86] established a system of syphoning of public money into the pockets of people close to the ruling parties. At the same time, the results of content monitoring of the local media show that project financing did not improve the quality of media reporting, but rather caused an increase in quantity aimed at justifying the costs.[87]

Moreover, the Anti-Corruption Council recently published a report that explains the mechanisms that were put into place so that the executive branch of the government, through financing of advertising and marketing services, managed to influence even the media with national coverage, both electronic and print.[88] The findings point out that, by spending an exorbitant amount of public funds from state institutions and public companies under their control, the Government was able not only to maintain undue influence on editorial polices by the sheer fact that they generated a lion's share of the media revenue, but also to secure the placement of media and marketing content that would present them in a positive way.

Threats and violence against journalists still remain a concern, especially against the several remaining independent media portals practicing investigative journalism (BIRN, CINS, KRIK). They are often attacked by public officials and the media close to the Government, whose intention is to publicly denigrate these independent journalists or smear their reputations by labelling them as traitors. Especially worrisome were the death threats directed against Slobodan Georgiev, journalist at BIRN, and Nedim Sejdinovic, President of the Independent Association of Journalists in Vojvodina, both of which remained unsolved.[89]

The above described incidents certainly do not contribute to creating an enabling environment for the freedom of expression. What also does not contribute to it is the work of independent regulatory bodies, most prominently the Regulatory Body for Electronic Media, which did not operate in full capacity due to difficulties and controversies surrounding the appointment of its members. Additionally, the Press Council published a semi-annual report for the period of March-August 2016, identifying 3,191 cases of breaches of the Codex of Journalists of Serbia, yet with no repercussions to those who were found to have breached it.[90]

13. REGIONAL ISSUES AND INTERNATIONAL OBLIGATIONS: Commendable Track-Record

There is evident backsliding with regard to regional issues and international obligations of Serbia. One of the few positive developments was the creation of the Regional Youth Cooperation Office (RYCO) of the Western Balkans, with the Agreement on establishment officially signed during the Western Balkans Summit in Paris on 4 July 2016.[91]

Serbia's refusal to take a firm stance concerning the referendum in Republic of Srpska (RS), organised on 25 September 2016 regarding the declaration of 9 January as a national holiday, can be seen as a tacit endorsement of the actions of the RS Government.[92] This was an unconstitutional referendum, as the Bosnia and Herzegovina Constitutional Court opined, and anything short of outright condemnation of it could be seen as potentially damaging to the Dayton Peace Agreement.

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[87] "Projektno finansiranje medija: primer grada Kraljeva" (Belgrade: BIRN, 2016), 5.

[88] See: Miroslav Milicevic, "Report on the Possible Impact of Public Sector Institutions on Media, through Financing of Advertising and Marketing Services" (Belgrade: Anti-Corruption Council, December 18, 2016), http://www.antikorupcija-savet.gov.rs/Storage/Global/Documents/mediji/Izvestaj%20Saveta%20-%20eng%20%20final%2003.03.%20(Repaired)%20final.pdf.

[89] "Death Threats against Journalists in Serbia Must Be Investigated and Their Safety Ensured, Says OSCE Representative," OSCE, September 16, 2016, http://www.osce.org/fom/264896.

[90] "Rezultati monitoringa poštovanja Kodeksa novinara u dnevnim novinama od marta do avgusta 2016. godine" (Belgrade: Press Council, 2016), 1, http://www.savetzastampu.rs/doc/monitoring-2016/izvestaj-o-monitoringu-postovanja-kodeksa-novinara-srbije-u-dnevnim-stampanim-medijima-mart-avgust-2016.pdf.

[91] "RYCO-Agreement Signed during the Western Balkans Summit in Paris on July 4th, 2016!," RYCO, July 5, 2016, https://rycowesternbalkans.org/2016/07/05/ryco-signed-at-paris-balkans-2016-conference/.

[92] Ksenija Pavkov, "Referendum U RS: Da Li De Biti Pritisaka Iz Beograda?," N1 Srbija, August 20, 2016, http://rs.n1info.com/a186923/Vesti/Vesti/Referendum-u-RS-Da-li-ce-biti-pritisaka-iz-Beograda.html.

When it comes to cooperation with International Criminal Tribunal for the Former Yugoslavia (ICTY), Serbia has failed to reach full cooperation regarding the execution of the Court's arrest warrant for three members of the Serbian Radical Party (SRS) charged with contempt of court. Moreover, in addressing the United Nation Security Council on the cooperation in war crimes in the Western Balkans region, the ICTY Prosecutor Serge Brammertz stated that "**too many politicians and public figures are denying well-established truths, enflaming ethnic tensions and repeating nationalistic slogans of the past.*"[93] This statement best describes the inflammatory rhetoric and a series of neighbourly incidents in the region over the past several months, most of them (in)conveniently taking place during two Croatian and one early Serbian elections, which lead to their reverberation in the media and the statements of public officials.

In the area of domestic processing of war crimes, what characterises the ongoing trials is an excessive number of overturned judgements (about half of them), which begs the questions both of the reasons provided for such decisions and the quality of indictments and first-instance proceedings.[94] Moreover, the Humanitarian Law Centre determined that the proceedings take excessively long: "On average, the trials before the special departments last more than three years and before the courts of general jurisdiction more than 12 years."[95]

The normalisation of relations between Serbia and Kosovo, the key condition for the regional reconciliation and for both countries on their respective European paths, has reached an impasse. First, due to political turmoil in Pristina little has been achieved in implementing the remaining provisions of the April 2013 First Agreement of Principles Governing the Normalisation of Relations, most importantly regarding the establishment of the Association of Serbian Communities. Despite this, the EU-facilitated dialogue continued and new agreements were reached, but the implementation of the already signed ones is lagging. However, a major incident that increased tensions in the precarious Belgrade-Pristina relations occurred after Serbian police arrested Nehat Thaci, the Director of Regional Police of Mitrovica South, on terrorism charges, at the border/administrative crossing point while he was trying to enter Serbia.[96] Subsequently, at a late night Friday session held on on 7 October, without consultations with Serbia, the Kosovo Parliament adopted a law which nationalised the mining complex Trepča in northern Kosovo, which was a disputed issue in the Brussels dialogue process. This led to the worsening of relations between Belgrade and Pristina, which might lead to further escalation and seriously affect the negotiations.

14. MIGRATION AND ASYLUM:
Commendable Track-Record

In the area of migration and asylum, Serbia was almost unanimously commended by all relevant stakeholders for its constructive approach to managing the ongoing refugee-migration crisis, despite the fact that it had to work with very limited resources and within a not fully established and functional system.

However, redirection of resources towards providing assistance and managing the migration-refugee flow has postponed, not surprisingly, the reforms at the policy level. Namely, the new Law on Asylum and the Amendment to the Law on Foreign Nationals, scheduled for adoption by the Action Plan for Chapter 24 for the second and third quarter of 2016, respectively, are now running behind the schedule. Moreover, the readmission of third country nationals was not efficient. Finally, there was some progress in increasing accommodation capacities.[97]

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[93] "ICTY Completion Strategy Report: Prosecutor Serge Brammertz Addresses the United Nations Security Council," August 6, 2016, http://www.icty.org/en/press/icty-completion-strategy-report-prosecutor-serge-brammertz-addresses-the-united-nations.

[94] "Transitional Justice in Serbia in the Period from 2013 to 2015" (Belgrade: Humanitarian Law Centre), 27, accessed October 13, 2016, http://www.hlc-rdc.org/?p=32161&lang=de.

[95] Ibid., 28.

[96] Adam Santovac and Gordana Bjeletid, "Uhapšen direktor kosovske policije, osumnjičen za terorizam," N1 Srbija, September 29, 2016, http://rs.n1info.com/a197427/Vesti/Vesti/Uhapsen-direktor-Regionalne-policije-Mitrovice.html.

[97] "Coalition prEUgovor Report on Progress of Serbia in Chapters 23 and 24 - October 2016," 39–42.

15. POLICE REFORM:
From Reformation to Deformation

Police reform insofar yielded mixed results which is why it needs to remain a top priority as a part of the negotiations with the EU and especially within the monitoring of the implementation of the Action Plan for Chapter 24.

For the first time ever, EC recognised politicisation of police as an issue that needs to be addressed within the framework of the Serbia's accession process, first in the Serbia Country Report for 2015 and then as an interim benchmark in the Joint Position of the EU for Chapter 24. The Joint Position clearly states that Serbia needs to take detailed steps to establish strong protective measures to strengthen integrity and operational independence of the police force from political influences and their protection from the influence of crime. [98] However, no progress has been made in this regard so far, and police continues to act less in the capacity of a service to the citizens and increasingly as an instrument of the ruling party.[99]

The newly adopted Law on Police from January 2016, although promoted as a tool that will fix several urgent issues within the police (most prominently human resource management), remains yet to yield positive results.[100] One positive development was the launch of a public call for appointment of the new Police Director, although the selection process still needs to be completed. Also, some progress has been made in regard to the adoption of the new bylaws related to HR management procedures and criteria. However, a number of other issues related to HR management are still present. For instance, no progress was made in the hasty process of announced dismissals and layoffs in the police, which remains controversial.[101]

It is often the case that information are extracted from the police and then used and abused to serve the interests of political parties. The MoI established a new Department for Security and Data Protection in 2016, and it is within its remit to collect and analyse operational data for the purpose of preventing leaks of confidential information from the police to non-authorised individuals. However, this Department is directly subjugated to the Minister, which provides room for abuse, while at the same time additionally complicating the already convoluted internal control structure within the MoI.[102]

Finally, the new Law on Police introduced three new anti-corruption mechanisms: the asset declaration, the integrity test and the corruption risk analysis. However, a set of bylaws is required for their implementation and the deadline for their adoption is February 2017.[103]

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[98] "Joint Position of the EU on Chapter 24" (European Commission, May 6, 2016), 27, http://www.seio.gov.rs/upload/documents/pristupni_pregovori/pregovaracke_pozicije/PG24%20Zajednicka%20pozicija%20EU.pdf.

[99] For illustrative purposes, see the article on the fabricated coup d'état from December 2015: Sasa Dragojlo, "Serbian Police 'open to Undue Government Control,'" POINTPULSE, December 9, 2015, http://pointpulse.net/magazine/serbian-police-open-to-undue-government-control/.

[100] For a comprehensive assessment of the police integrity in Serbia, including political influence, see: Saša Djordjevic, Bojan Elek, and Dunja Tasic, "Assessment of Police Integrity in Serbia" (Belgrade: Belgrade Centre for Security Policy, December 2015), http://pointpulse.net/wp-content/uploads/2015/11/Assessment-of-Police-Integrity-in-Serbia-final.pdf.

[101] See: Saša Djordjevic, "The Drama in Blue," POINTPULSE, February 9, 2016, http://pointpulse.net/magazine/the-drama-in-blue/.

[102] For a detailed account see: Saša Djordjevic, "Department for Information Leakage," POINTPULSE, October 6, 2016, http://pointpulse.net/magazine/department-information-leakage/.

[103] For a comprehensive review of the issues pertaining to the implementation of one of the measures, integrity test, see: Sofija Mandic, "Testing the Integrity of Police Officers," Belgrade Centre for Security Policy, May 2016, http://www.bezbednost.org/upload/document/bcbp_-_police_integrity_testing_-_eng.pdf.

POLICY RECOMMENDATIONS

Based on the above presented analysis, the following general recommendations need to be considered for the policy areas covered by this study.

To the government:

- The Government should remain committed to implementing the Action Plans for Chapters 23 and 24 in good faith and in a timely manner;
- The Government needs to remain open to the consultation process with all relevant stakeholders, including the civil society organisations, and not only for the purposes of reporting on the achieved progress;
- Orchestrated attacks on independent state institutions, investigative journalists and civil society organisations need to be investigated and perpetrators prosecuted;
- A new, comprehensive law on security services needs to be adopted to ensure proper delineation of competences, and coordination and cooperation between them as well as with other institutions;
- In order to ensure free and fair elections, a single election law needs to be adopted, with the view to unifying election-related provisions currently spread across and contained in several laws (e.g. the Law on the Election of
- Representatives, the Law on Local Elections, the Law on Political Parties, etc.).[104] Key issues to be addressed are: update of the voter register, increasing capacities of REC and its transformation into a permanent body, and implementing necessary measures to assure a more level playing field for the election contestants;
- A positive track record needs to be established and demonstrated, including final convictions in high-profile cases, in the areas of fight against corruption and fight against organised crime. In addition, a positive track record is needed in the areas of human rights and minority issues, particularly regarding the full exercise of freedom of expression, and in fight against discrimination of the most vulnerable groups;
- Depoliticisation should be placed on the Government's agenda as a priority. This is particularly true for the areas of judiciary, public administration, public enterprises, law enforcement agencies and the media.

To the parliament:

- Adopting the changes to the Rules of Procedure of the National Assembly could provide a leeway, at least for the opposition parties if the ruling majority have no intention, to exert more control over the executive branch of the Government;
- Making the legislative agenda/calendar publically available would contribute to better participation of relevant stakeholders in the process of adopting laws;
- Parliamentary committees need to be allowed to fully exercise their control powers, especially over the security sector, in line with their remits.

To political parties:

- Political parties need to take on a public commitment to supporting the rule of law and ensure the separation of state and party;
- As key stakeholders in the political arena, through their internal procedures and public commitment, political parties need to sanction clientelism, nepotism and assure depoliticisation of key state institutions and sectors.

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[104] CRTA, "Executive Summary Report: Early Parliamentary Elections 2016," 5.

To the EU institutions:

- The EC should move their focus away from insisting on stability and security, and shift it back to fundamentals, i.e. supporting the rule of law, basic democratic values and strong institutions.
- The EC should avoid overt technicisation in their reporting and recommendations, and focus on assessing actual, substantive progress achieved in different areas.

To civil society:

- CSOs need to continue with their watchdog role when it comes to the reform process under the auspices of the EU accession talks, to assure that substantive changes are taking place on the ground.
- CSOs should improve their cooperation and exchange best practices, with the view to achieving a synergetic impact on the policy process. This is true at the national, but also at the Western Balkans level, since democratic backsliding is taking place across the region and these trends share common features and dynamics.
- CSOs should further develop and initiate actions of monitoring, targeted advocacy and awareness raising, even when not invited to do so by all the stakeholders involved in the EU accession process.

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